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MINE SAFETY—"THE WILBERG MINE INCIDENT"

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

REVIEWING MINE SAFETY ISSUES, FOCUSING ON FACTORS WHICH LED TO THE WILBERG MINE FIRE IN ORANGEVILLE, UT, AND ON ENFORCEMENT OF MINE SAFETY AND HEALTH ADMINISTRATION REGULATIONS

APRIL 27, 1987

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MINE SAFETY—"THE WILBERG MINE INCIDENT"

MONDAY, APRIL 27, 1987

U.S. Senate,
Committee on Labor and Human Resources,
Washington, DC.

The Committee met, pursuant to notice, at 9:02 a.m., in Room SD-430, Dirksen Senate Office Building, Senator Orrin G. Hatch (Ranking Minority Member) presiding.

Present: Senators Hatch and Simon.

Also Present: Representative Howard Nielson.

OPENING STATEMENT OF SENATOR HATCH

Senator Hatch. Today, we will focus the attention of this Committee on one of the most important issues we have considered in my two terms in the United States Senate. This is an investigation of the causes, and the lessons to be learned from, the 1984 Wilberg mine fire in which 27 persons lost their lives.

Now, this hearing has been long in coming because of the difficulty in putting out the fire and of course, retrieving and discovering all of the physical evidence necessary for the Mine Health and Safety Administration to conclude its investigation.

The last piece of equipment was finally retrieved last summer, and MSHA was able to get out a preliminary report on its investigation last month. So we expect a final report within the very near future.

Much criticism was raised last month about MSHA's preliminary report because it focused only on what caused the fire at Wilberg on the evening of December 19, 1984. I want to say at the outset that this hearing will go far beyond the issue of what started the fire. We want to learn all there is to learn about what happened at Wilberg—what went wrong, why it went wrong, what has been done to prevent a similar disaster, and what more needs to be done.

The purpose of today's hearing is to obtain answers to the following questions:

1. Were proper procedures followed prior to the Wilberg fire by the mine operator, the Mine Safety and Health Administration and the Union, the United Mine Workers of America?

2. If the regulations in effect at the time of the Wilberg tragedy did not provide sufficient opportunities for escape, what new regulations are needed, and has MSHA moved quickly enough to get those new regulations in place?

3. Were the Wilberg miners trained properly in emergency evacuation procedures? If not, what have the mine operators and MSHA done to correct this situation?

4. Was the mine operator, the Emery Mining Corporation, warned prior to the fire by its own audit staff that fire hazards existed at Wilberg? If so, did it act properly to correct them?

5. What improvements in mining equipment and equipment maintenance procedures have been made as a result of the Wilberg fire, and are these improvements being applied to the mining industry as a whole?

6. Are other regulations needed such as the regulations dealing with the use of diesel equipment underground, and has MSHA acted with dispatch in developing such regulations?

On my right is a large map of the Fifth Right section as it existed at Wilberg at the time of the fire. The longwall face will be pointed out to you by my staff member, at the top of the map. This is about a 600-foot-long area where the mining takes place. Coal is extracted from the face and sent down the belt entry of the section to a main conveyor belt, and from there it is transported out of the mine.

The intake entry on the right is where miners and equipment go down to the longwall face. It is also where the air current passes to ventilate the section. Once air arrives at the longwall face, some of it comes back up the belt entry, some goes down the tailgate entry on the left, and the rest goes to ventilate this mined-out area or gob, as it is called. This air exits through the bleeder entries to the main return air course.

The Wilberg Mine employs what is known as the longwall mining technique. This is a technique imported from Europe a couple of decades ago to replace the old room and pillar mining technique, which is less safe than the longwall technique. Under the longwall plan in effect at Wilberg, there were two required escapeways, one of which had to be on the intake air entry. The company chose to make the belt entry its secondary escapeway. They did not use the tailgate entry as an escapeway.

Now, tailgate entries are highly susceptible to roof falls. They are actually the old intake entries of the adjacent longwall section that has just been mined. Consequently, the roof area is extremely weak. At Wilberg, there had been a roof fall and blockage in the tailgate of Fifth Right prior to this particular tragedy. And we will hear testimony that this blockage caused some miners their lives.

In 1984, and under existing law, there is no requirement that the tailgate be kept open as an escapeway. It is certainly arguable, however, that there should be such a requirement. But the fact is that this sort of requirement did not exist at the time of this fire.

At the time of the Wilberg fire, mine management had decided that an attempt would be made to set a 24-hour company longwall production record. For that reason, some 28 persons, including 9 company management personnel, were present at the Fifth Right section, as opposed to a normal crew of 13 or 14.

Shortly before 9 p.m. on the night of December 19, a parts runner, Paul Salisbury, discovered fire at the Number 4 entry of the First North section of Wilberg, which is at Crosscut 36. He turned his diesel pickup truck around and drove to the mine phone about 1,200 feet away. Mr. Salisbury contacted Percy Mounteer at mine headquarters, who in turn contacted the Fifth Right section and advised them of smoke.

At the same time, two other miners saw puffs of smoke rising from the intake entry at the Fifth Right belt overcast. An overcast is a sort of viaduct where one mine passageway goes over or under another. It keeps the air flow separate in the two intersecting passageways. One of these miners tried to call and warn the Fifth Right section, but was unable to contact anyone on the mine phone at the belt drive. When he tried to make that call to warn the Fifth Right section, he was unable to contact anyone on the mine phone at the belt drive. His phone was defective.

Mr. Salisbury returned to the mine phone at Crosscut 39 and reported smoke and flames in the Number 4 entry. His trip took about five minutes. Fire now blocked the Fifth Right intake entry escapeway, and smoke was moving toward the section.

Percy Mounteer at headquarters tried to call the Fifth Right section with Mr. Salisbury's latest report, but failed to make contact. It appears that an evacuation had already begun.

When the fire started, the intake entry escapeway was contaminated immediately by fire and gases and rendered impassable. The aluminum overcast separating the air currents in the two escapeways began to heat up quickly, and it melted less than 30 minutes after the fire was observed, making the belt entry escapeway impassable.

One person, Kenneth Blake, the longwall general maintenance foreman, was able to escape through a circuitous path that took him out into the fourth entry at Crosscut 40.

Despite heroic rescue efforts by some 20 teams of volunteers, the other 19 miners and 8 management persons on the Fifth Right section died in the fire.

The MSHA witnesses, I believe, will elaborate a little later on the rescue efforts and what paths the 27 persons each took to try to get out of the mine on this occasion.

Now, because of the unusually large number of witnesses scheduled to testify today, each witness has been asked to limit his or her oral remarks to no more than five minutes. We are going to have to hold you to that so we can get through this hearing. We have a lot of questions, and we want to get them answered.

Now, each of you will be allowed to submit a written statement and any necessary additional materials for inclusion in the published record of the hearing. So we encourage you to do that if you feel you have not had enough time here within the five minutes. But we are going to be hard on the five-minute time limit; otherwise we will never get through with the hearing and get this matter resolved.

The fire was a tragedy, as we all know. It was a terrible, terrible tragedy. It was an incredible jumble of misfortune, failure and, it seems to me, a mistake. There is no way that anything we can do here can lessen the grief of those who have lost their loved ones and who have suffered as a result of this fire. There is no way that we can lessen the grief for the families of the 27 men and women who died in this fire. But we have to learn from this tragedy so that it never, never happens again.

As we all know, mining is a very dangerous occupation. It is a tough job. And there are going to be accidents in mining. But there should not be failures. And in this case, we had failures. And from what I understand, the Wilberg Mine fire was really a very tragic failure.

We will now have Congressman Nielson's opening remarks.

OPENING STATEMENT OF CONGRESSMAN NIELSON

Mr. **Nielson**. Good morning. First off, let me thank Chairman Ted Kennedy, Vice-Chairman Orrin Hatch, and the other members of the Labor and Human Resources Committee for inviting me to participate in this important hearing on the Wilberg Mine disaster. I appreciate the opportunity to sit with this distinguished panel.

The Wilberg Mine is located in Emery County, Utah, which is part of the congressional district I represent. It is one of many mines in an area of the State that is all but dependent on coal for jobs and income. Since being elected to Congress, I have personally toured a number of these mines and have met many of the mineworkers who work in the area. Wilberg was the first longwall operation I had the chance to visit. I have been back through the mine two more times since the disaster occurred.

I can still recall my impressions when I first visited the Wilberg operation. I was encouraged by the gains in productivity and economy made possible by using the longwall technology, because Utahns know all to well about depressed coal markets and the lay-offs and closed mines that come with it. Though longwall mining has hardly been a panacea for mineworker unemployment, it is fair to say that the technology has saved many Utah mine operations from having to shut down permanently, by enabling them to compete with eastern United States and foreign coal producers. Longwall mining is here to stay. The only issue left to tackle is how to make it as safe as possible.

I'm sure some believe that safety and increased productivity are mutually exclusive conditions, that companies will always be inclined to put profits ahead of safety and, as a consequence, the workers will ultimately pay for this with increased injuries and the like.

This doesn't have to be the case, however. In fact, research indicates that mines with good safety records are generally more productive than those with poor records.

As the saying goes, a safe work environment is no accident. It is an objective which everyone must continuously strive for, especially in underground mining. It requires never-ending vigilance; there is no point where one can sit back and relax and say "now we are safe." You can never let down your guard. Safety takes time, effort, and a lot of teamwork to achieve. In my view, this team consists of four key players: the company; the union leadership; MSHA; and the workers themselves. If any one of these or any combination should fall short, the consequences could be tragic, as Wilberg unfortunately has demonstrated.

A lot of people have been looking forward to this hearing for some time, hoping that once and for all the questions about Wilberg will finally get answered. That is a worthy goal, and I sincerely hope we can move in that direction, but I am afraid our most qualified and knowledgeable witnesses are no longer with us, so the best we can do is speculate.

While an integral part of the investigative process involves trying to assess blame—and no doubt we will spend some time doing just that—the most noble, most important thing we could possibly do here today is to take into account all the lessons we have learned from this episode, and immediately translate them into guidelines and regulations that will ensure that such a tragedy never happens again. If we do anything less than this, then surely the Wilberg victims will have died in vain.

Thank you.

Senator Hatch. With that brief explanation of what has happened here, we are going to call our first panel of witnesses to testify. The first panel will be Wilberg miners and family members of victims of the Wilberg disaster, and they will follow in this order: Lester Walls, Ron Carpenter, Don Cologie, Edward Saintz, and James Bertuzzi.

We are going to start with Mr. Walls. I am going to call you at the end of five minutes. If you can be shorter, that is great, too, but please understand, we are not trying to cut you off. We will allow you to submit additional testimony and additional records, but it is for the purpose of being able to get this thing resolved here if we can today.

Mr. Walls?

STATEMENTS OF LESTER WALLS, MINER, HUNTINGTON, UT, ACCOMPANIED BY BARRY WILCOX, COUNSEL; RON CARPENTER, MINER, HUNTINGTON, UT; DON COLOGIE, MINER, FERRON, UT; EDWARD SAINTZ, FATHER OF DECEASED MINER, JOHNSTOWN, PA, ACCOMPANIED BY EDWARD HAVIS, COUNSEL; AND JAMES BERTUZZI, FATHER OF DECEASED MINER, INDIANA, PA

Mr. Walls. Well, I would like to know why John Barton and Lamar Bishop have not been called in on any of the hearings to this date to give their explanation why.

Senator Hatch. John Barton and——

Mr. Walls. Lamar Bishop—why they granted a variance for that tailgate to be closed.

Senator Hatch. I understand Mr. Barton will testify here today.

Mr. Walls. Yes, but it has taken two years to get him here to do this. I want to know why it was not done before. The tailgate was closed; why was it left to be closed, when the law states it will be kept open.

Senator Hatch. All right. Well, he will testify today. The other gentleman has been asked to submit a written statement for the record, which will be just as valid as being here, it seems to me.

Mr. Walls, give us your testimony.

Mr. Walls. I think we should have a very thorough investigation of District 9 MSHA officials because of the grievances that have been set on the procedures for granting variances and ventilation plans being changed.

And I definitely believe if you have two escapeways, you ought to have two separate splits of air, so you have good air coming in to get out there, separated.

They have eliminated the gas watchman, I understand, at Kaiser Mine, and that is a very gassy mine. Ours is already eliminated now. And we are taught on a gassy mine they are all to be treated as gassy, never as nongassy.

So what are we going to do here at Kaiser? Now we are eliminating our gas watchman. Are we going to kill some more people, blow it up—which is bound to happen. It is just a matter of time now.

My counsel would like to have a few minutes with you.

Mr. WILCOX. Senator Hatch, I have talked with Mr. Walls, and there are two things that he wanted me to try to bring to the Committee's attention.

In 1972, the Sunshine Mine fire killed 92 miners. I was involved in that case, and I want to bring to your attention the similarities of that fire and this one, for the purposes of deciding what should have been done.

In that fire as in the Wilberg fire, the ventilation circuits were short-circuited. In both fires, there was no viable escapeway. In both fires, there were reported failures of self-rescuers. In both fires, there were toxic plastics in the area. In both fires, there was an ineffective communication system, and in both fires, the training of the miners was deficient.

At the time of that fire in 1972 and the subsequent investigation, I heard many of the things that are now being said that ought to be done. And yet 12 years went by, and nothing happened. Our concern is, are we going to go through the same thing of just talking and not getting effective rules.

Our suggestions are as follows—that all fires should be reported. The present rule requires that only fires that last 30 minutes need to be reported to MSHA. Now, we find it very interesting that you do not report a fire until it is 30 minutes old. In the Wilberg case, in the work that was done in the wrongful death case, it was determined that there had been many fires at the Wilberg, Deer Creek and Des-Bee-Dove mines, that those were not reported between mine managers and the mining people.

So number one, all fires should be reported, not only to let MSHA know, but so that the management knows what is going on in the mine.

Number two, the task force that was set up to investigate the two-entry system, if two entries are going to be allowed, all of the task force recommendations should be made law.

Number three, mine operators who knowingly—and I say knowingly—violate mandatory safety standards should be subject to suit for that.

We think if those things were initiated into the law, we would have some progress.

Senator HATCH. Thank you very much.

Mr. Walls, thank you.

We will now turn to Mr. Carpenter.

Mr. CARPENTER. My name is Ronald Carpenter. I am Safety Committeeman at Local 2176 at the Wilberg Mine. I was the longwall foreman on the crew that died in the Fifth Right section on December 19th of 1984 at the Wilberg Mine. It is a damned shame that I am alive today because of an illness, and my fellow workers are not, because of lack of concern and action on the part of the coal operator, Emery Mining, and the enforcement agency, MSHA.

Many contributing hazards existed on December 19th, 1984 which had a very strong impact on the entrapment and death of my friends. These hazards stem from the mining practices being used to the extent that all escapeways that are required by law where a two-entry system is practiced was being used.

MSHA was aware of this hazardous condition that existed several weeks prior to the fire which caused such a tragedy to the community—loss of family, friends and fellow workers and jobs. I feel that if there had been more than two entries that possibly more people could have escaped, and that if the company had maintained a three-entry system as well as they do a two-entry system, they would not have any problems holding the roof.

While driving a two-entry section, if there was any trouble outby the section, the people inby would not have anyplace to go. We knew to eliminate the two-entry system and have stronger laws and have the insurance, that these laws will be enforced.

It is not bad enough that we have to breathe coal dust for eight hours a day; now we have also to breathe diesel fumes. We feel that for the amount of diesel equipment being used in a section that there is not enough air.

That is why I am here today, to show desire for more research and stronger enforcement and safer mining practices so that in the future someone will not have to say thank God that he or she was not sick and unable to go to work.

We are putting our trust in you, our Congressional representatives, to listen to all our views and to this investigation and for you to use your knowledge to make stronger and better laws to protect us so as we go to our jobs each day, we know that we have men and women in our Congress working to protect us from mining companies and agencies such as MSHA that have such a disregard for human life that they are allowed to turn their backs on normal safety precautions.

Coal mining safety laws have come a long way since my grandfather's day, but they also have a long way to go because of use of modern-day technology. Better and faster is not always safer. I miss my 26 brothers and one sister who had to die so needlessly. It has left such a terrible void in my life, our community, and in the lives of their families and friends. That is why I am here today to ask you men and women to show concern for my life and the lives of all other coal miners and to try to prevent another tragic disaster from happening in the coal fields again.

Senator HATCH. Thank you, Mr. Carpenter.

I am happy to have Congressman Nielson with us here today. I have specifically requested that he come over and participate in this hearing since this is his Congressional District as well as mine. So I am very happy that he is here.

Howard, we are glad to have you with us. If you have any remarks, we would be happy to take them at this time before we turn to Mr. Cologie.

Mr. NIELSON. Thank you, Mr. Chairman.

I appreciate your allowing me to come to these hearings. I think it is very important. As I indicated to you, Senator Hatch, I visited the mine just two weeks before the fire, and I visited twice since, and I am very interested in what is transpiring there. I am convinced there is enough blame to go around, and we will assess what the blame is.

I appreciate the gentlemen coming all the way from Utah for these hearings. I have an opening statement. I will not read it, but I would like permission to submit it for the record.

Senator **HATCH**. We will submit that immediately following my opening statement.

Mr. Cologie, we will turn to you now at this time.

Mr. **COLOGIE**. My name is Don Cologie. I have had 16 years of mining experience. I am past President of Local 2176 in District 22. I was also chairman of the Safety Committee and on the Mine Committee.

Particular to the section here involved, on December 12 and 13, 1984, I and Sid Harvey made the UMW inspection of the Wilberg Mine. We covered all the Fifth Right area. We went up the belt, the face area, across the face to where it was caved on the tailgate. We went across the bleeder. The Fifth Right longwall belt was clean, other than the sloughage, and in mines in Utah, on account of the weight we have over us and the bounces of the mountains, you have sloughage. But other than that the belt was clean.

I do not buy the compressor caused that fire. I have got to disagree with MSHA on that, because alongside that compressor, there were rags, there was a box of resin, there were rock dust bags, there was a coiled hose and oil on the floor that was drained out by Sid Harvey, who was given permission to change that oil every so often. These things did not burn.

I just cannot believe that fire would move 200 feet. I feel that it was electrical, either a belt cable—belt starter box cable in the belt entry by the return overcast. When I inspected it, I had a rough time trying to get around it, and I had to go to the other side of the overcast.

Also on the self-rescuers, I have to disagree with Mr. Wilcox, sitting here beside me. I was in a test up at the training center in Huntington, Utah. We put the Ocenco and the Dragger SCSR, which is a self-contained self-rescuer—it makes oxygen—we put them in the freezer, refrigerator for eight, ten hours, and every one worked.

Now, on those self-rescuers, the night of the fire, there were Union hands that told me they grabbed them, and grabbed the water hose and started running, a one-inch water hose, to try to fight that fire. They do not call for a demand load like that right away. You cannot get that much air out of them to work, and they are for escape, mainly.

All right. Also, a company spokesman said why didn't the Union complain before the fire. I did. When I was Safety Committee chairman, I went to management there at the mine site—not upper management, not higher up, but the highest ones at the mine. I complained and complained on a two-entry system. I told them it was nothing but a death trap. Say you have noxious poisonous gases in the intake. You have got to come out the return and it's filled with these gases no matter which entry, you would be in these gases.

But that spokesman said the Union did not say anything, and I made that clear in my deposition to Mr. Herschel Potter back in Price, Utah.

Also, I went with inspectors, and I pointed out a situation which I thought could become a violation or a citation. And he said, "Listen, boy"—that is the way he said it—"this is my inspection, not yours."

Senator HATCH. Who said that? Who said, "Listen, boy"?

Mr. COLOGIE. The inspector.

Senator HATCH. Okay.

Mr. COLOGIE. I feel the inspectors—and I have always said this, and I said it to Mr. Potter at my deposition up there in Price the inspectors in the West—I came from District 6 originally, which is in Ohio—I do not think they were as tough out here, maybe because our mine at Wilberg did not have any methane, because it was liberated over thousands of years.

One day I was told about a verbal variance, so I went to Mr. Matekavik down at the Orangeville office. I said, "Jack, what on the world is going on here?"

He said, "What do you mean, Don?"

I said, "I have never heard of such a thing as a verbal variance." A methane monitor on a continuous miner, if it was not working right, would stop the miner.

So the Orangeville office gave the people up there on the mine site permission to run that miner jumpered out for eight hours if they had one in the system, which means the warehouse or closeby. If they did not, I think it was 24 or 48 hours. I am not sure on the 48 hours. I never heard of that before.

Mr. Potter asked me, "Have you ever heard of a verbal variance, Don?"

I said, "Not until I came out to Utah." I never heard of them in the East. And I would go to Safety and I would say, "Hey, now, you cannot do this, you cannot do this. This is wrong."

I made a statement one day to the safety director at that time, who is another fellow. I said, "As chairman of the Safety Committee I will give you a week." And I said, "I cannot direct you as a work force, I know that. I will give you two weeks. I would like to see these verbal variances you have." To this day, I have never seen them.

Also, I thought I did not feel inspectors should ride in pickup trucks into a section. I went with them myself on inspection, and they would zip us into a section and zip us out. When the UMWA, the local Union, makes its safety inspection, we try to make ours before the inspectors, because we were working with the company to try to find these things and keep us from getting violations and citations. That is our bread and butter, that coal mine. And we were working with the company to correct these before MSHA got there.

Can I say a few more words?

Senator HATCH. Sure. Go ahead.

Mr. COLOGIE. I do not feel they can make a good inspection, as I say, in an Isuzu pickup truck, taking you to the section, and then zipping you back up. The UMWA, we walked from portal to every section; I walked all the returns. I think you get a better inspection on foot.

Senator HATCH. Thank you, Mr. Cologie.

Mr. COLOGIE. You are welcome.

Senator HATCH. Let us turn to you, Mr. Saintz, now, and take your testimony.

Mr. SAINTZ. I am not a coal miner. The notes that I have, I took from testimony and statements of others and from a preliminary investigation.

Senator HATCH. Okay.

Mr. SAINTZ. It said, "It was not clear when the order was given, but the power was shut off at the surface substation, which de-energized all mine power and turned off underground water pumps at 9:26 p.m. The water pumps were restarted at 10:18 p.m., and water restored to the fire hoses at approximately 11:00 p.m.," which is why I think the fire got out-of-hand.

"Sustained fire fighting efforts did not occur until nearly two hours after the fire was first observed, and evidence indicates that the compressor was running while it was on fire. The air compressor apparently ran unused and unattended for about 69 hours prior to the fire."

"The fire plan submitted by Peabody Coal Company and approved by MSHA, October 11, 1974, the adopted plan, contained a provision which advised miners not to use self-rescue devices until smoke was observed"—which, as I understand, with carbon monoxide, you cannot observe it.

"The defective page switch on the belt drive mine phone prevented him, Mr. Price, from warning the section."

"The Emery Mining Corporation operated the Wilberg Mine 66 months without submitting a program for fire fighting and evacuation as required by this 30 CFR 75.110123."

"The mine safety people inspected the Wilberg mine numerous times in that period. A review of the Wilberg inspection file indicated that no enforcement action was taken by MSHA to cause compliance with this mandatory regulation. This investigator can only surmise what the outcome would have been if the Mine Safety had exercised its mandated responsibilities under the Federal Mine Safety and Health Act and required a program for fire fighting and evacuation and required that the miners employed by Emery Mining be trained in that program. The extensive loss of life may have been prevented."

"This investigator believes that if Emery Mining Corporation and the Mine Safety and Health Administration had complied with the requirements of this requirement, the air compressor would have been located in a fireproof structure area. Thus, when the fire started, it may have been contained in this enclosure until detected, and the lives of 27 miners would not have been lost."

"Even if the 27 miners in the Fifth Right section had been successful in escaping from the section, the intake escapeway was blocked by the fire, and they would have been unable to reach the designated return escapeway, which was the conveyor entry. The main return airway, which was an alternate escapeway, was filled with smoke and carbon monoxide."

This is the deposition of Gary Wayne Christianson, a rescue team captain from Price, Utah.

They asked, "Gary, in your opinion, if you had a constant supply of water while you were fighting this fire, with pressure to it, do you feel you could have put it out in the early stages?"

His answer: "I believe we could have. I do not know to what extent the fire had went down the return. I never got on the outby section of that. But at one time, when we were on top of the overcast, there were no flames in sight; there were just small spots, hot spots. There was a lot of smoke in the return and the outby side of the overcast. But as far as flames, there was none."

This is from the statements of Lee Lemmon, maintenance superintendent, Huntington.

Question. "In the case of an emergency like what occurred, the fire at Wilberg, is there a way to isolate the high-voltage power that would go to the mouth of Five Right and feed the Five Right belt drive transformer in that section?"

His answer: "Yes."

And there is a follow-up to that kind of a question: "In case of an emergency like what occurred, was there a way to isolate the high-voltage power that would feed the Fifth Right belt drive transformer without de-energizing the water pumps?"

His answer was, "Yes. If that would have happened, they would have had water immediately and probably could have contained the fire."

This is from the statement of Daniel Paul Brink, longwall superintendent. "The next part of the statement I would like to make, I am not real happy about the things I saw during the fire. I think we were evacuated too many times and went back in. It took too long to make decisions. While the decisions were being made, and people were being evacuated, the fire grew in intensity. We went right back in again—and I say my people went back in again. My people plus a lot of other people went back in and fought the fire to get them back to where they were before we were evacuated. Again, there was too much damn time spent on making decisions as to what to do, while the people were outside and the fire was burning. I guess that is about all I have got to say."

Senator HATCH. Well, thank you, Mr. Saintz. We appreciate that and we feel badly about your daughter.

Mr. SAINTZ. Thank you, sir.

Senator HATCH. Mr. Bertuzzi?

Mr. BERTUZZI. I am James Bertuzzi. I am the father of one of the miners killed in the accident.

It has been over 28 months since the miners were murdered by Emery Coal Company, and this was condoned by MSHA. It is time that somebody is brought to justice.

When your son is unaccounted for for 363 days, you read every clue in the transcripts to find out where he is. You get a copy of the mining law, and you read about the violations and nothing done about it—nothing done about the violations by Emery by MSHA.

I think the return off the longwall should be a designated escape route. If it would have been, my son would be alive today.

John Barton gave a waiver, and he was placed in a position to take care of the health and safety of the men. I think he should be prosecuted; also, the men who refused to answer questions at the hearings should be brought in here and those questions answered, and find out what they know about this if they refuse to answer questions when the transcripts are going on.

Emery Coal Company set a record—27 miners killed on a longwall. I hope it is never broken. But I hope something is done about it.

MSHA and Emery Mining Company have no regard for mining laws or men.

That is all I have, but I think it is time that something is done about this. MSHA gave Emery Mining Company a little fine. My son is worth a whole lot more to me than that little fine that they fined them.

Senator **Hatch**. Well, thank you, Mr. Bertuzzi.

Let me just say to each of you that our hearts go out for the losses of the loved ones that each of you are still suffering from and I guess will forever suffer from; there is no question when you think about it, that this could have been prevented and should have been prevented.

It is one of those things that is depressing to sit here and think about how 27 miners lost their lives, when something might have been done that was better, or steps could have been taken in the latter part of 1984 to perhaps have prevented this.

It seems to me all we can do now in this hearing is learn about Wilberg and try to find out just what caused this and what we can do to make sure it never, never happens again. That is the purpose of this hearing.

Mr. Saintz and Mr. Bertuzzi, let me just ask each of you what steps you think the Government, the union and the mining industry should take to ensure a greater level of safety in mines such as these?

Mr. **Bertuzzi**. There has got to be another way off of that longwall. That dot, between 21st & 22nd crosscut is my son's body. He tried to come out Six Right and could not get out. That is my son, right there. He was the last one found.

He was seen by Kennith Blake at the mouth of the Fifth Right Section, #5 crosscut area. My son had to travel approximately 2,700 feet using his Self-Contained-Self-Rescuer [S.C.S.R.], only to find his escapeway blocked by John Barton's illegal variance. John Barton said, "The miners weren't trained properly." My son was trained properly in Pennsylvania on the usage of the S.C.S.R.

John Barton's variance killed my son! If I break the law I go to jail. Why isn't John Barton in jail?

Senator **Hatch**. You are saying you need a third exit.

Mr. **Bertuzzi**. Yes, you need a third exit. If that exit had been open, he would have been alive today.

Senator **Hatch**. Mr. Saintz?

Mr. **Saintz**. As I understand, the people in the Thirteenth Section, the minute they got word of the fire, they immediately evacuated the mine. I want to know why Fifth Right was not evacuated immediately, like the other Number 13.

Senator **Hatch**. Okay.

Let me just address to you other miners the following questions. The first is this: Is Wilberg Mine presently safe? Is it safer than it was at the time of this particular fire?

We will start with you, Mr. Carpenter, and Mr. Cologie, you will be next, and then you, Mr. Walls.

Mr. CARPENTER. What was that?

Senator HATCH. Is the Wilberg Mine safer today than it was when this fire occurred, and do you consider it safe today?

Mr. CARPENTER. It is safer than it was, but MSHA let the company mine coal in the Thirteen Right, with basically the same ventilation plan, a two-entry system—which I do not believe they should even have. You need to have more entries to escape from a mine if this ever happens again.

I do not know if they do not realize that the 27 people they killed is enough, or it is not enough, and they are still trying to get laws passed where they can mine coal with two entries. You cannot do it without killing somebody.

If there is a fire outby that section, somebody is going to get it, and it is going to happen again if they get away with a mine with a two-entry system.

Senator HATCH. All right.

Mr. Cologie?

Mr. COLOGIE. Well, you are asking on the Wilberg Mine. We also have Cottonwood Mine there, so I am going to take them both into consideration.

Senator HATCH. Okay.

Mr. COLOGIE. Yes, I think the company has come a long way on safety. Like I said, we were working together before the fire. A lot of people will not believe it, but they have gone to solid block stoppings, they have put metal sheets of steel on top—in other words, almost a fireproof stopping. An enormous fire would eventually burn through it, but you would be out by then, I would say. And they have put lifelines; they have censored the mine; they have got a monitoring system to tell you for CO—in other words, they say state-of-the-art equipment. I do not know. But I think they have made a big turn-around.

Senator HATCH. Thank you.

Mr. Walls?

Mr. WALLS. Yes, they have made a big turn-around. They have even installed fireproof doors. When you come through, you shut it, and it seals an area off. And plus they have put in CO detection. If you go into a section, you have to notify control and tell them that you are going to be in there if you are running a piece of diesel, and when you come out, you have to notify them, because it will raise the CO a little bit. If it goes too high, they are on the phone, screaming, wanting to know who is in there and what is going on and check this and check that. So it has come 60 to 75 percent better.

Senator HATCH. Thank you.

Mr. Carpenter, you had one more comment.

Mr. CARPENTER. I just wanted to bring out about the diesel equipment and this fire detector. If one of these vehicles or more than one of these vehicles are running in a section, this alarm goes off in the office that there is a fire or trouble somewhere in the mine, there is CO somewhere in the mine, a high concentration of it. Sometimes they cannot get hold of somebody to tell them that this is going on. I really do not have much faith in it.

Senator **Hatch**. Okay. Well, let me ask you three this. In your opinion, could any or all of the 27 miners have escaped if that tailgate section had been open, in your opinion? It would have been through the tailgate of the Fifth Right section that he is pointing out right here.

If there had been a requirement in force at the time of this accident, do you think any or all of these people would have escaped?

Mr. **Carpenter**. I think a lot of them would have.

Mr. **Walls**. Yes, they could have all gotten out that way, because they would have known it was open. They stood in the bathhouse and talked about, debating whether to go in to work that night or not because of that being closed. If it would have been opened and maintained, they would have known that they had a third way out of here; we are not trapped.

Mr. **Carpenter**. Two weeks before this fire, I sat with his son and two other gentlemen who died and we were discussing this, that there was no other way out of this section if something ever happened. And the longwall coordinator that died in there, too, said to me, "If you guys don't like the damn job, get out of here."

Mr. **Wilcox**. Senator Hatch.

Senator **Hatch**. Go ahead.

Mr. **Wilcox**. In the wrongful death case, it was brought out in the testimony of Kenny Blake that he saw Mr. Bertuzzi down in the dogleg area when they were all congregating there in the smoke. Mr. Bertuzzi's body was then found over in the return near the cave, which indicated to us that he was able to find his way, even clear through the smoke, all the way up, across the face, and down to that cave. If he could have made it from that point to the cave, it is clear to me and the experts that we hired that if the Sixth Right return had been open, they all would have gotten out.

Senator **Hatch**. I see.

Did the company conduct, in your opinion, effective or essential training in the utilization of self-rescue devices prior to the fire? And also answer this: Has it conducted effective training in the utilization of self-rescue devices since the fire?

Mr. **Carpenter**. Before the fire, no.

Senator **Hatch**. And then since as well.

Mr. **Carpenter**. Since the fire, they gave us training on them. We have had hands-on practice with them. We have them every so often. We have ones in the office and we can train with them, or you can ask Safety about them. But before the fire, no.

Senator **Hatch**. Do you other fellows agree with that?

Mr. **Walls**. I agree with him.

Senator **Hatch**. Do you, Mr. Cologie?

Mr. **Cologie**. To some extent.

Senator **Hatch**. Tell me what you mean by that.

Mr. **Cologie**. Well, I would like to get back to the question you asked before that. I was sitting here, thinking, and I do not want to be arguing with these guys sitting beside me here. But on the self-rescuers, you asked if that tailpiece had not been blocked, do you think they all could have escaped.

Let me tell you a little bit—maybe you are not familiar with a coal mine—about what happens on the longwalls. You have a hot belt roller; maybe the belts are up on the frame of the belt structure. You will smell this smell, and you will say, "Wait a minute." The foreman will say, "Keep it running. I will go down and check it"—which is normal. That happens three times a week, on longwalls. My brother was on the other wall, and he told me a lot of times it happens.

My personal feeling is that a lot of those longwallers, like Mr. Carpenter said, could have gotten out, but a lot of them did not put the rescuers on because they figured it was a small belt roller, maybe it was a cable—it might have been a motor getting hot down around the drive someplace. They did not think it was a fire that enormous. And most of them sat there, and you cannot see the poison. It probably came up and overcame them before the smoke ever got there.

That is my personal opinion of why a lot of them lost their lives.

Senator HATCH. Well, let me ask you this question as a follow-up question. Has the company ever discouraged the use of self-rescue devices until a miner actually sees smoke?

Mr. COLOGIE. Well, I have got to honestly say yes, to the extent that quote-unquote, they had said that they cost—and I am not right on the figures—anywhere from maybe $260 to $460 apiece, I am not sure. One company spokesman said that. Do not use them unless you necessarily have to. In other words, do not open them because they cost a lot of money. I said that also in my statements in Price.

Senator HATCH. Let me ask Mr. Saintz.

Mr. SAINTZ. Mr. Havis wants to comment.

Mr. HAVIS. I am Edward Havis, and I represent Mr. Saintz. In discussing the matter with Mr. Saintz, he asked me to emphasize to this Committee that at the time of the fire, there was no carbon monoxide equipment in the mine. And as Mr. Cologie has just pointed out, carbon monoxide is an odorless and colorless gas that is quickly fatal.

Since the fire, carbon monoxide detection equipment, I understand, is being installed in the mines, but the technology was available at the time and prior to the fire.

It is Mr. Saintz' sincere desire that this Committee urge the use of technology which is available for safety and well-being, despite expense and despite inconvenience.

Senator HATCH. Okay, thank you.

Mr. Cologie, let me ask you this again, and any of you other miners who care to comment on any of these questions. Do diesel fumes in a mine present a problem in masking, for instance, the odors of a fire?

Mr. COLOGIE. I was asked that question before, and I have not been in the situation where I was on the inby side of a coal mine fire. But a coal mine fire, I think personally, from what I smelled when I was in there with the recovery team inspection team, checking Fifth Right out, I think it has a distinct smell of its own.

I personally do not think that diesel fumes would mask the strong coal fire. That is my opinion.

Senator HATCH. Okay. Any differences? Go ahead, Mr. Carpenter.

Mr. CARPENTER. Well, I just asked him how about if the diesel was on fire?

Mr. COLOGIE. Well, then you would not have a coal fire smell; you would have diesel——

Mr. CARPENTER. You would still have a fire.

Mr. COLOGIE. Yes.

Senator HATCH. Yes. Well, let me just ask the three of you—I have asked Mr. Bertuzzi and Mr. Saintz this question—what steps do you think should be taken by Government, by industry and by the Union to ensure that we avoid another Wilberg Mine tragedy?

Let us start with you, Mr. Carpenter.

Mr. CARPENTER. I think they ought to have a three-entry system or more, separated on separate ventilation, separate splits of air, to get out of the mine, and I think on diesel equipment that you need more laws, and you need to have trained personnel, certified personnel, working on this equipment. They have scrubbers on them, and you get these guys that do not know anything about them, and they just send them into the mine. They need trained, certified people to work on this equipment if they are going to have it underground.

Senator HATCH. Is there any addition that either of the other two can offer?

Mr. WALLS. I agree with him.

Senator HATCH. Is there anything else you would care to add?

Mr. WALLS. I also think if you are going to have a three-entry system, you should have a bleeder open and maintained, well-maintained, because if you recall, Gordon Conover had, I think, 300 feet to go, and he would have been in fresh air. And he was in this time from nine—they figured he came down by a certain point, at twenty after one, and it was later than that when he came past there and where they found him. If that would have been up where a man could have travelled it, he would have been alive today.

Senator HATCH. Okay. Let me turn to Congressman Nielson for any questions he might have.

Mr. NIELSON. Thank you.

Mr. Walls, what was your position at Wilberg?

Mr. WALLS. Grader operator.

Mr. NIELSON. You made some complaints about the system, and I agree that there were some problems. The self-rescuers were not working, you indicated; there had been several fires at the mine, and so on. Did you ever bring these complaints to the attention of your Union?

Mr. WALLS. I did.

Mr. NIELSON. To the Union Safety Committee, specifically?

Mr. WALLS. I did.

Mr. NIELSON. What was their reaction?

Mr. WALLS. They went on up with it, and they went as far as they go, and then they were told they had a variance on it. That took the rights from us right there.

Mr. NIELSON. In other words, the Union did not protect the workers sufficiently, is that what you are saying?

Mr. CARPENTER. The law did not.

Mr. **Walls**. The law did not. When they take and give a variance, that takes our rights away.

Mr. **Nielson**. Now, your son was one of the ones—I remember reading about this—who talked with Mr. Carpenter and others and was aware of this cave-in in Sixth Right.

Mr. **Walls**. That is right.

Mr. **Nielson**. When this variance was granted, did you file an official protest with MSHA at all?

Mr. **Walls**. He filed one with the Safety Committee, and then went to check on it, but there was nothing in writing. They said it was a verbal variance. Any variance that is given has to be in writing and submitted to the Safety Committee ten days prior before going to MSHA for approval or denial.

Mr. **Nielson**. Mr. Cologie, on that point?

Mr. **Cologie**. I would like to help answer that question. At the time of that cave-in in Sixth Right, I think we were on contract strike. And when we were on strike, the bosses were in there cribbing, to secure that up. And not until I came back to work on November 3rd or the 5th, did they tell us that there was a variance. Now, I did not see any variance or paper or modification for whatever they wanted, but we were told there was a variance on that, that would not be a designated escapeway anymore.

Mr. **Nielson**. So having known that it was not an escapeway, what did the Union do? Tell its people not to work under those conditions or suggest they not work under those conditions? Did they threaten not to work at all?

Mr. **Cologie**. No.

Mr. **Nielson**. They did not have a strike?

Mr. **Cologie**. No. They talked about it. They wanted to use their personal days or sick days because they were worried about that. But we did not tell them not to work or anything like that.

The situation like Mr. Walls said there was—I have forgotten what I was going to say. Just one second—he made me think, and I was going to say something.

Mr. **Nielson**. Why don't I ask Mr. Carpenter and Mr. Walls. Regarding the evacuation plan for Wilberg, were you aware of the instructions to wait until you saw or smelled smoke before donning an SCSR?

Mr. **Carpenter**. Yes. They told us that a lot of times.

You would go to the head gate, and he would say, well, I am going to go and check it. You guys stay here, and I will go check it.

Mr. **Nielson**. Mr. Walls?

Mr. **Walls**. That is correct.

Mr. **Nielson**. Would any miner really follow that instruction under an emergency such as this?

Mr. **Carpenter**. Apparently, some did. Some followed it, and some did not.

Mr. **Nielson**. What is the attitude of the Emery Mining Company now? Are they changing that instruction generally? Are they changing their view on that?

Mr. **Carpenter**. It is Utah Power and Light now.

Mr. **Nielson**. Yes, I understand.

Mr. **Carpenter**. Yes, they are.

Mr. **Walls**. Yes, they were changing a great deal. As a matter of fact, they even have fire drills now. And that is all a surprise. Nobody knows it is happening until it happens and they get everybody out just as fast as they can.

Mr. **Cologie**. Mr. Nielson, could I get back to what I was thinking of?

Mr. **Nielson**. Yes.

Mr. **Cologie**. Like I said, we were on contract strike when we came back, so we figured when they told us they had a variance—well, MSHA is higher than I am. I am just a Safety Committee chairman. And we figured it was okay. That is what we figured, because we thought, well, they got the okay from MSHA, and we were told a variance, and there was nothing we could do. That ties our hands.

Mr. **Nielson**. Yet Mr. Carpenter, speaking with Lester Walls, Jr., and others, did not like it and were protesting it.

Mr. **Cologie**. Yes, sir.

Mr. **Nielson**. How far did that protest go?

Mr. **Cologie**. Yes, sir. They talked about it. They wanted to take their personal days. They did not want to work unless it was straightened up. They were scared of it.

Mr. **Nielson**. How many inspections did MSHA conduct at the Wilberg Mine in 1984?

Mr. **Cologie**. They make their quarterlies, and sometimes there are spot inspections, unexpected spot inspections.

Mr. **Nielson**. The most recent was two weeks before the fire; is that correct?

Mr. **Cologie**. Yes. I was on that section with them.

Mr. **Nielson**. Were you involved in all those inspections as a Safety Committee man?

Mr. **Cologie**. Well, we had two sides of the portals. We had the Cottonwood Portal and the Wilberg Portal. I took all the First North Wilberg side myself. With the MSHA inspection, I was with the inspector, the company rep and Mr. Matekavik the day we went across the bleeder of Fifth Right.

Mr. **Nielson**. Were other Union members involved in these inspections as well?

Mr. **Cologie**. Oh, yes, sir. We have a Safety Committee.

Mr. **Nielson**. And company representatives, also?

Mr. **Cologie**. Yes. They will send a company man with each inspector—if it were two inspectors, then there will be two company men. One goes with each inspector, plus the UMWA rep.

Mr. **Nielson**. With all of the inspections and all the errors and problems that were listed by MSHA following the fire, why weren't you and also the company more concerned about correcting these problems you discovered in these inspections?

Mr. **Cologie**. Well, other than that cave on the tailpiece, the problems we found on inspections, I mean, they were not that bad. And I can say here, and I could bet any miner in that whole mine would never have bet we would never have a fire in that coal mine. That mine was wet. I would have bet my life we would never have a fire in that mine. Maybe somebody would get killed by a roof fall or rib crush, but never a fire. I think every miner has said that.

Mr. NIELSON. Did you discuss the variance and these others problems with the International Union officials? (No) I thought you were asking about MSHA.

Mr. COLOGIE. We discussed them when we walked around with them, but after the inspection we would go out into the mine manager's office, and we would discuss—if MSHA wrote something we thought should be S&S or should be more severe than what they did, we argued it. If we did not, we did not have any argument. But we would talk it over with the company, management.

Mr. NIELSON. Did you discuss it with company officials?

Mr. COLOGIE. And MSHA would be in there, too. After the inspection, the inspector, the mine manager and the safety people, the reps who went on inspection would sit down in the mine manager's office and go over these things, yes, sir.

Mr. NIELSON. What was the company's reaction when you protested?

Mr. COLOGIE. Well, like I said, we never really protested anything because it was not that severe, other than that cave on that tailpiece, and like I said, they told us they had a variance.

But certain things, citations, we might have discussed, but we never took any to where we had to go to court.

Mr. NIELSON. What reason did MSHA give—and I will ask them later, when it is their turn—what reason did they give for not requiring that Sixth Right be cleared?

Mr. COLOGIE. I honestly cannot answer that. I do not know, sir. I do not even know if I asked them that.

Mr. NIELSON. Do any of you know?

Mr. COLOGIE. I will say this. Pardon me. All the law, I think, states is you have got to have two designated escapeways. They had the intake and the belt. After Sixth Right caved—and you could get to that bleeder, but it was tight—going from Sixth across Seventh to Eighth, because the inspector and myself went, and the company man went through there. I think the intake and the belt made them legal; I do not know. That is two different escapeways, but it was only on one split air, you see; it was not two different splits of air.

Mr. NIELSON. Would anyone else like to suggest—I think it is important—why MSHA granted the waiver and specifically why they did not require the company to clear the Sixth Right.

Mr. Carpenter?

Mr. CARPENTER. Well, you are talking about all these escapeways and why they are not open. I do not know why it was not open, or why it was not kept open. But on this belt line, they say that is an escapeway. Well, you had eight-inch hollow blocks there for stoppings on that belt line that leaked. If that CO is coming up the intake, it is going to go into the belt line, too, you are losing an escapeway right there. You do not have anywhere to do; you did not have anywhere to go.

Mr. WILCOX. Congressman Nielson?

Mr. NIELSON. Yes.

Mr. WILCOX. I am Bryant Wilcox, counsel for Mr. Walls.

I think one thing the Committee ought to understand is the location of the aluminum overcast at Crosscut 34 was the key element of this fire. That material violated both Federal and State laws that require the overcast to be made of incombustible materials. When it burned, it caused a reversal in the air in the belt, and instead of having a neutral belt, you had two intakes both being fed by the fire.

The point I think these fellows are trying to make is that if anybody had really taken a close look at that from a ventilation standpoint, they would have seen that the way that ventilation was set up, if there had been a fire at that overcast, there were no escapeways. And that, I think, is the critical point on MSHA granting the waiver. They granted the waiver, as I understand it, because they felt the airway, the return airway, could be examined from both sides of the return and that air was passing across it and that was okay. That was their rationale as I understand it.

Mr. NIELSON. Okay. Now, the company has gone to steel now, instead of aluminum, so that is an improvement.

Senator HATCH. Steel and concrete, I think.

Mr. WILCOX. That is right.

Mr. NIELSON. But I still have to ask the question—I do not think it has been answered yet—what was the reason or the excuse, if you will, for MSHA not requiring that Sixth Right to be open. Was there some overriding reason that allowed them to grant the waiver, and some reason that was more important than the ones you are mentioning?

Mr. CARPENTER. Apparently all they needed was a two-entry system, so they would not have to keep that open. If that is all they needed was a two-entry system with two escapeways, your intake and your belt line, there would be no need to keep that open.

Mr. NIELSON. Was there any hazard in fixing the Sixth Right? Was there any hazard involved?

Mr. CARPENTER. Do you mean in cleaning the cave?

Mr. NIELSON. Yes.

Mr. CARPENTER. Other than time, I do not think so, no.

Mr. NIELSON. Because I read in the transcript that as long as they kept the air passage open, they thought that would take care of the major problem of the Sixth Right.

Mr. CARPENTER. No. Other than time, if they had taken the time to clean it, it would have been open. All they had to do was crib it, and it would have been open.

Mr. COLOGIE. I thought, Mr. Nielson, I answered that earlier. The return air did pass—the air could get over that cave. People, no. And you had your two-entry escapeway, your belt and your intake, which I think is by the law legal.

I answered that, I thought, a couple minutes ago.

Mr. CARPENTER. That is why we need three entries or more.

Mr. NIELSON. I have no more questions. I will let you finish answering that one.

Mr. WALLS. Mr. Nielson, you have got your headgate up there at your longwall face. Now, we will come in there six years—what if that had caved in, six shields? You would have had them trapped. You would have had no way out. You could have never gotten out of there. The same as when you are mining a two-entry system. The law does not allow a belt and a return. One has got to be an intake, and one has to be the return, with gusty conditions, am I right. When that comes down through there, the dust, nobody is going to work in that dust when they are mining. Nobody is going to throw dust in there. So we are going to mine 16 hours. Then what do we have? A lot of float dust. You are still illegal because you have a belt in a return system, and a spark among return dust, or even a hot roller, or any metal sparking, can set an explosion. That starts a chain reaction.

Mr. NIELSON. Senator, I would like to submit some other questions in writing. I know our time is limited this morning, but I have some other questions.

Senator HATCH. That will be fine, Congressman Nielson.

We want to thank all of you for being here.

Mr. Saintz, we are very sorry about your daughter, Nannette Wheeler. We feel very badly about that, and Mr. Walls, your son Lester, and Mr. Bertuzzi, your son Jim, and Mr. Carpenter and Mr. Cologie, your friends. This is a real tragedy, and we feel very, very badly about it. And this hearing is going to find out just what can be done and what has been done, what can be done, and what is going to be done. So your time has been well-spent, and we think that you have done a good job to try and help, I think, everybody concerned to do a better job in the future so this never happens again.

I want to thank all of you for being here. Thanks for making the long trip, and thanks for being with us.

Our next witness will be Mr. James Simonelli, former auditor for the Emery Mining Corporation, from Albany, Georgia. Mr. Simonelli, we would like to welcome you to the Committee, and we look forward to taking your testimony at this time.

Mr. Simonelli, if you will pull your microphone up close to you, everybody can hear what you have to say. If we could have order, we would appreciate it.

STATEMENT OF JAMES SIMONELLI, FORMER AUDITOR FOR EMERY MINING CORP., ALBANY, GA

Mr. SIMONELLI. The Wilberg Mine fire disaster was not an isolated incident of chance, and it was not the first fire at a Savage Brothers-operated UP&L mine. It was not even the first fire at the Wilberg Mine. To evaluate the true causes of that disaster, you must first understand the relationship between the mine owner, UP&L, and the mine operator, Emery Mining Corporation, a Savage company.

The largest coal-producing mines in Utah were assigned to the most novice and inexperienced mine operators without competitive bidding or any formal evaluation.

UP&L and EMC were already being questioned for this relationship when I was hired as the internal auditor. As the internal auditor, I reported to Neal Savage, President, and Bill Zeller, CEO. Neal Savage directed me to act as his eyes and ears and report all I learned and observed to him. During my employment, I observed many problems and reported those problems to Neal Savage and Emery Mining executives.

The State Division of Public Utilities in Utah investigated and confirmed the majority of my concerns—concerns that involved safety. EMC had an ineffective preventive maintenance program.

There were safety violations, and EMC manipulated production to maximize bonuses and failed to report accidents.

UP&L was indifferent to excessive costs and inefficiency at its own mines operated by EMC. EMC additionally spent $63,000 to investigate me. Utah Power and Light engaged private investigators also. These and other items of mismanagement, waste and inefficiency cost ratepayers in Utah, Wyoming and Idaho $104 million.

[Information supplied for the record follows:]

I FIRE EXTINGUISHERS DID NOT WORK. ON VEHICLE EXTINGUISHER COULDNT BE REACHED THE OTHER NEAREST THE BALZE WAS SPENT OR INOPERABLE. SAME FINDINGS IN OTHER LOCATIONS INCLUDING WASTED EXTINGUISHERS.

II THE FIRE HOSES NEAREST THE BLAZE WERE INOPERABLE OR NOT CONNECTED.

III SELF RESCUERS WERE INADEQUATE OR LEAKED.
THE MEN DIDNT KNOW HOW TO PROPERLY USE THEM.
SUBSEQUENT FINDINGS WERE THAT THE W/H HAD STORED MANY SELF RESCUERS OUTSIDE FOR THE WINTER.
THESE WOULD HAVE BEEN THE SAME RESCUERS THAT WOULD HAVE BEEN AVAILABLE AS RE-ISSUE ITEMS TO THE WILBERG AND OTHER MINE'S.

IV NO EVACUATION PLAN

V NOT AN UPTO DATE EMERGENCY CALL LIST

VI CALLING AN OUTDATED PHONE FOR BILL Z. FOR HOURS.

VII MINE MAPS OUTDATED.

VIII ESCAPE ROUTES NOT MARKED OUR KNOWN.

XI MASS CONFUSION

X NO ONETOOK CHARGE OR MADE DECISIONS THE DECISIONS MADE CAUSSED GREATER LOSES AND FED THE FIRE. SEE (VII).

XI SANITIZE LOG

XII PUBLISH TWO VERSIONS

XIII PRODUCE SINGLE INTERVIEW MEMO FROM ART B.,BILL Z., JOHN F.,WAYNE J., EVERT W.,LAGRAND W. WITH ARMANDO MILES.

XIV STATMENT TO BILL ABOUT YOU WILL KILL PEOPLE NEXT TIME THIS TIME YOU WERE LUCKY.

XV BILL Z AND LAGRAND WERE SKIING.CAME AND LEFT.

XVI INSTALL SELF EXTINGUISHERS

XVII CASP SAFETY ITEMS PLACE EXTINGUISHERS , A NEW SAFETY PLAN, EVACIUASTION AND EMERGENCY CALL LIST

XVIII LEARNED OF OTHER FIRES AND UNSAFE CONDITIONS.

XIX TIME BOMB STATEMENT BY VIC C.

XX CBFD SYSTEM FREE TEST OFFER FROM COLORADO COMPANY

XXI MAUGHN GUYMAN COMMENTS

XXII ART BRUNO NO ONE WOULD MAKE DECISIONS

XXIII SHRED DOCUMENTS

XXIV PHOTOGRAPHS

XXV JUMPERED EQUIPMENT

XXVI PLAY HOUSE USE OF EXTINGUISHERS

XXVII BORE HOLE REPORTING.

XXVIII

PEOPLE:

EMC	UPL/UMWA	DECEASED
ART BRUNO	JIM HISLIP	JIM HAMLIN
JOHN FORBUSH	DON COLOGI	VIC CINGOLANI
LAGRAND WILBERG	FNU/ KELLY	ALEX POULIS
EVERT WINDER	BOB ZELLER	
ROSS NORTON		
LARRY GUYMON		
MAUGHN GUYMON		
JOE COLISIMO		
GEORGE BELL		

Mr. SIMONELLI. One special assignment I received was to investigate the Des-Bee-Dove mine fire, where I determined: fire extinguishers did not work; fire hoses nearest the blaze did not work; self-rescuers were inadequate, and the men were poorly prepared and trained in their use. There was no evacuation plan. The emergency call list was outdated. Mine maps were inaccurate and outdated. Escape routes were unknown and not marked. The CEO was on a skiing vacation, and he flew in and flew back to his vacation when MSHA and he concurred to prematurely seal the mine.

Subsequent to this fire investigation in 1983, one year before Wilberg, it was determined that installation of fire monitoring systems was needed, to install self-extinguishers on mobile equipment, establish a proper evacuation plan, publish an up-to-date emergency call list, perform an audit on the Safety Department, and practice fire drills and mine evacuation. The CEO later claimed he disposed of the report.

Neal Savage disregarded audit reports. Neal Savage discontinued the operations audit function and the internal audit function when the reports displeased him with continued revelations of inadequate safety, maintenance, financial and management performance. Savage and Zeller had all my audit papers and documents shredded within 48 hours after my departure from EMC.

Bill Zeller and lesser corporate executives of EMC were not disciplined or reprimanded by Savage or UP&L for their inadequate management of the Des-Bee-Dove mine fire, one year before Wilberg.

Operator mismanagement by the Savages and owner indifference continued to send a message to the rank and file, and that message was: Production at all costs.

I personally observed and saw and reported the following during my employment at EMC: the failure to install self-extinguishers on mobile equipment; haphazard and disorganized follow-up on MSHA violations; instructions to the safety director to see what he could do to influence MSHA inspectors; hundreds of destroyed fire extinguishers in scrap and unrepairable condition in the UP&L stockyard; incorrectly numbered crosscuts; overheated, glowing resisters on direct current electrical rail equipment (man trips), my own injury and near electrocution due to rubble underfoot and an overhead D.C. trolley line at the Deer Creek Mine; unreported fires prior to Des-Bee-Dove; outdated and inaccurate maps; disregarded audit reports; a closure order due to the Safety Department's failure to perform regular and scheduled training.

EMC established a deferred compensation and insurance plan by which it could benefit from the death of an involved employee. EMC did not pay for the MSHA fines imposed due to its unsafe operations. Rather, UP&L ratepayers footed the bill. The implication of this arrangement seems clear. Emery Mining Corporation and the Savages did not suffer financially from its unsafe mining activity, but could in fact benefit financially from it.

Specifically regarding the Wilberg Mine, I observed first-hand: blocked and rubble-strewn escapeways; self-rescuers out of sight and out of reach; broken extinguishers; poorly organized shop cars; inadequate and long overdue self-rescuer training; fire hazards like diesel equipment operated with rags stuffed in the fuel tank neck;

lubricant and oil cans discarded in the cribbed emergency escapeway; jumpered belt drive motors; jumpered diesel equipment, and the disabling of a properly operating safety shut-off device.

In summary, Senator and Congressman, Emery Mining and Utah Power and Light have retained the law firms that hired the former two Governors, Scott Matheson and Calvin Rampton, to represent them in proceedings before the Public Service Commission which regulates utilities in Utah. Matheson and Rampton appointed the very Commissioners who in August 1984 refused to hear my concerns. As one Commissioner said, "We just do not have the time."

Let us not wait for another catastrophe to kill more coal miners. This is "fire-gate" and it was unfortunately a cover-up of incompetence and corruption in coal mining. This "fire-gate" should not be allowed to happen. These men passed through a portal—27 coal miners passed and did not return. Coal miners deserve a better chance than that. The entrance to daily work should not be a trip one makes into the unknown world of inadequate safety, incomplete protection and mismanagement. Each miner must feel confident that the trip to work will be a round-trip back home to the light of day and the love of family.

[The prepared statement of Mr. Simonelli follows:]

STATEMENT BY JAMES SIMONELLI

THE WILBERG MINE FIRE-DISASTER WAS NOT AN ISOLATED INCIDENT OF CHANCE, AND IT WAS NOT THE FIRST FIRE AT A SAVAGE BROTHERS OPERATED U.P. & L. MINE. IT WAS NOT EVEN THE FIRST FIRE AT THE WILBERG MINE.

TO EVALUATE THE TRUE CAUSES OF THAT DISASTER YOU MUST FIRST UNDERSTAND THE RELATIONSHIP BETWEEN THE MINE OWNER UTAH POWER AND LIGHT AND THE MINE OPERATOR EMERY MINING CORPORATION, A SAVAGE COMPANY.

THE LARGEST COAL PRODUCING MINES IN UTAH WERE ASSIGNED TO THE MOST NOVICE AND INEXPERIENCED COAL MINE OPERATORS WITHOUT COMPETITIVE BIDDING OR ANY FORMAL EVALUATION.

U.P. & L. AND E. M. C. WERE ALREADY BEING QUESTIONED FOR THIS RELATIONSHIP WHEN I WAS HIRED BY THE EXECUTIVE COMMITTEE OF E.M.C. IN 1984. AS THE INTERNAL AUDITOR FOR E.M.C. I REPORTED TO NEAL SAVAGE , PRESIDENT AND BILL ZELLER C.E.O. NEAL SAVAGE DIRECTED ME TO ACT AS HIS EYES AND EARS AND REPORT TO HIM ALL THAT I OBSERVED AND LEARNED. DURING MY EMPLOYMENT AT E.M.C. I OBSERVED MANY PROBLEMS AND REPORTED THOSE PROBLEMS TO NEAL SAVAGE, OTHER E.M.C. EXECUTIVES AND EVEN TO AN U.P. & L. AUDITOR.

THE STATE OF UTAH DIVISION OF PUBLIC UTILITIES INVESTIGATED AND CONFIRMED THE MAJOR PORTION OF MY CONCERNS IN THEIR INVESTIGATIVE REPORT DATED NOVEMBER 3, 1986. THOSE CONCERNS REGARDING SAFETY ISSUES AND THOSE RELATIVE TO THE ISSUES AT HAND ARE:

#3 E.M.C. MINING OPERATIONS WERE CHARACTERIZED BY WASTE OF MATERIAL, SUPPLIES AND EQUIPMENT.

#8 E.M.C HAD AN INEFFECTIVE PREVENTITIVE MAINTAINENCE PROGRAM.

#10/11 E.M.C. MANAGEMENT KNEW OF THE WASTE, INEFFICIENCIES, MISMANAGEMENT AND EXCESS COSTS AND CONCEALED SUCH.

#14 SAFETY VIOLATIONS AND FINES WERE EXCESSIVE AND PAID FOR BY U.P.&.L RATEPAYERS.

#18 E.M.C. MANIPULATED PRODUCTION TO MAXIMIZE BONUSES AND FAILED REPORT ACCIDENTS.

#22 U.P. & L. WAS INDIFFERENT TO EXCESSIVE COSTS AND INEFFICIENCY AT IT'S OWN MINES OPERATED BY E.M.C.

E.M.C. ADDITIONALLY PAID SIXTY THREE THOUSAND DOLLARS OF RATEPAYER MONEY TO INVESTIGATE ME. U.P. & L. ALSO ENGAGED PRIVATE INVESTIGATORS TO INVESTIGATE ME. THESE AND OTHER ITEMS OF MISMANAGEMENT, WASTE, AND INEFFICIENCY COST U.P.& L. RATEPAYERS ONE HUNDRED AND FOUR MILLION DOLLARS.

ONE SPECIAL ASSIGNMENT I RECEIVED WAS IN JANUARY OF 1984. THE C.E.O OF E.M.C. DIRECTED ME TO INVESTIGATE THE DECEMBER 19, 1983 DES-BEE-DOVE MINE FIRE. (THE BEEHIVE MINE FIRE). THE FOLLOWING IS A SUMMARY OF THE FINDINGS AND EXECUTIVE LEVEL MEETING DISCUSSIONS.

#1 FIRE EXTINQUISHERS DID NOT WORK.

#2 FIRE HOSES NEAREST THE BLAZE DID NOT WORK

#3 SELF RESCURERES WERE INADEQUATE AND THE MEN WERE POORLY PREPARED AND TRAINED IN THEIR USE.

#4 THERE WAS NO EVACUATION PLAN.

#5 THE EMERGENCY CALL LIST WAS OUTDATED AND INACCURATE.

#6 THE MINE MAPS WERE OUTDATED AND INACCURATE.

#7 ESCAPE ROUTES WERE UNKNOWN AND NOT MARKED.

#8 NO ONE TOOK CHARGE.

#9 THERE WAS MASS CONFUSION.

#10 A PROPER LOG WAS NOT KEPT.

#11 I WAS ASKED TO FABRICATE MISSING INFORMATION FOR THAT LOG.

#12 I WAS ALSO ASKED TO PRODUCE A SECOND SANITIZED LOG TO ISSUE TO THE U.M.W.A.

#13 THE C.E.O. THEN ON A SKIING VACATION FLEW IN AND THEN FLEW BACK TO HIS VACATION WHEN HE CONCURRED WITH M.S.H.A. PREMATURE ORDER TO SEAL THE MINE.

SUBSEQUENT TO THIS FIRE CERTAIN PROPOSALS WERE MADE IN LATE FEBRUARY 1984 AS FOLLOWS.

A) INSTALL FIRE MONITORING SYSTEMS.

B) INSTALL SELF EXTINQUISHERS ON MOBILE EQUIPMENT.

C) ESTABLISH A PROPER EVACUATION PLAN.

D) PUBLISH AND UP TO DATE EMERGENCY CALL LIST.

E) PERFORM AN AUDIT OF THE SAFETY DEPARTMENT.

F) PRACTICE FIRE DRILLS.AND MINE EVACUATION.

THE C.E.O. LATER CLAIMED HE THREW THE REPORT AWAY.

I HAVE LEARNED THAT THE FIRST EVACUATION-SIMULATION FIRE DRILL WAS HELD AT U.P.& L.'S MINES WITHIN THE PAST THREE MONTHS. THREE YEARS AFTER IT WAS SUGGESTED AS A SOLUTION TO PREVIOUS FAILURES.

NEAL SAVAGE DIREGARDED AUDIT REPORTS. NEAL SAVAGE DISCONTINUED THE OPERATIONS AUDIT FUNCTION AND THE INTERNAL AUDIT FUNCTION WHEN THE REPORTS PRODUCED DISPLEASED HIM WITH CONTINUED REVELATIONS OF INADEQUATE SAFETY, MAINTAINENCE, FINANCIAL AND MANAGEMENT PERFORMANCE. SAVAGE AND ZELLER HAD ALL MY AUDIT WORK PAPERS AND DOCUMENTS SHREDDED WITHIN FOURTY EIGHT HOURS OF MY DEPARTURE FROM E.M.C.

BILL ZELLER AND OTHER LESSER CORPORATE EXECUTIVES OF E.M.C. WERE NOT DISCIPLINED OR REPRIMANDED BY NEAL SAVAGE OR U.P.& L. FOR THEIR INADEQUATE MANAGEMENT OF THE DES-BEE-DOVE MINE FIRE.

OPERATOR MISMANGEMENT BY THE SAVAGES AND OWNER INDIFFERENCE CONTINUED TO SEND A MESSAGE TO THE RANK AND FILE. THAT MESSAGE WAS "PRODUCTION AT ALL COSTS".

I PERSONALLY EXPERIENCED, SAW, OR REPORTED THE FOLLOWING DURING MY EMPLOYMENT WITH E.M.C.

- FAILURE TO INSTALL SELF EXTINQUISHERS ON MOBILE EQUIPMENT.
- HAPHAZZARD AND DISORGANIZED FOLLOW UP ON M.S.H.A. VIOLATIONS.
- INSTRUCTIONS TO THE SAFETY DIRECTOR TO SEE WHAT HE COULD DO TO INFLUENCE M.S.H.A. INSPECTORS.
- HUNDREDS OF DESTROYED FIRE EXTINQUISHERS IN SCRAP AND UNREPAIRABLE CONDITION IN THE U.P.& L. STOCKYARD.
- INCORRECTLY NUMBERED CROSS-CUT MARKINGS.
- OVERHEATED, GLOWING RESISTORS ON D.C. ELECTRICAL RAIL EQUIPMENT (MAN TRIPS)
- MY OWN NEAR INJURY OR ELECTRICUTION DUE TO RUBBLE UNDER FOOT AND AN UNCOVERED OVERHEAD D.C. TROLLY LINE.
- STATEMENTS BY THE TWO ASSISTANT SAFETY DEPARTMENT DIRECTORS OF INSUFFICIENT ACTION BY THE SAFETY DIRECTOR AND REPORTS OF SUCH TO CORPORATE EXECUTIVES.

- UNREPORTED FIRES PRIOR TO THE DES-BEE-DOVE FIRE.
- OUTDATED AND INACCURATE MINE MAPS.
- DISREGARDED AUDIT PROPOSALS FOR THE SAFETY DEPARTMENT, ENGINEERING DEPARTMENT AND OTHER DEPARTMENTS.
- A C.B.F.D. SYSTEM AUDIO WARNING DEVICE THAT WAS SHUT OFF BECAUSE IT WAS ANNOYING.
- P.C.V. BEING DUMPED IN THE MINE..
- A CLOSURE ORDER DUE TO THE SAFETY DEPARTMENTS FAILURE TO PERFORM REGULAR AND SCHEDULED TRAINING.

E.M.C. ESTABLISHED AN INSURANCE AND DEFERRED COMPENSATION PLAN BY WHICH IT COULD BENEFIT FROM THE DEATH OF AN EMPLOYEE. E.M.C. DIDN'T PAY FOR THE M.S.H.A. FINES IMPOSED DUE TO IT'S UNSAFE OPERATIONS. RATHER, U.P.& L. RATEPAYERS FOOTED THE BILL. THE IMPLICATION OF THIS ARRANGEMENT SEEMS CLEAR. EMERY MINING CORPORATION AND THE SAVAGES DID NOT SUFFER FINANCIALLY FROM IT'S UNSAFE MINING ACTIVITY. BUT, COULD IN FACT BENEFIT FINANCIALLY FROM IT.

SPECIFICALLY REGARDING THE WILBERG MINE I OBSERVED FIRST-HAND THE FOLLOWING.

- BLOCKED AND RUBBLE STREWN ESCAPEWAYS.
- SELF-RESCUERS OUT OF SIGHT AND OUT OF REACH OF MINERS.
- BROKEN FIRE EXTINQUISHERS.
- POORLY ORGANIZED SHOP CARS.
- TOTALLY INADEQUATED AND LONG OVERDUE SELF RESCUER TRAINING.
- THE INABILITY TO WALK IN CERTAIN AREAS DUE TO RUBBLE AND DEBRIS.
- A FECES LADEN ESCAPEWAY OF MOLDY AND STAGNENT AIR.

FIRE HAZARDS LIKE:

- DEISEL EQUIPMENT OPERATED WITH RAGS STUFFED IN THE FUEL TANK FILLER NECK.
- LUBRICANT AND OIL CANS DISCARDED IN THE CRIBBED EMERGENCY ESCAPE WAY.

- JUMPERED BELT DRIVE MOTORS.
- JUMPERED DEISEL EQUIPMENT.
- THE DISABLING OF A PROPERLY OPERATING SAFETY SHUT OFF DEVICE SO A DEFECTIVE MACHINE COULD BE USED.

SUMMARY

EMERY MINING AND UTAH POWER AND LIGHT HAVE RETAINED The Law Firms That hired TWO FORMER UTAH GOVERNORS SCOTT MATHESON AND CALVIN RAMPTON TO REPRESENT THEM IN PROCEEDINGS BEFORE THE PUBLIC SERVICE COMMISSION, WHICH REGULATES UTILITIES IN UTAH. MATHESON AND RAMPTON APPOINTED THE VERY COMMISSIONERS WHO IN AUGUST 1984, REFUSED TO HEAR ALL MY CONCERNS BECAUSE AS ONE COMMISSIONER SAID, WE DON'T HAVE THE TIME.

LETS NOT WAIT UNTIL ANOTHER CATASTROPHE KILLS MORE COAL MINERS. A SPECIAL STANDING COMMITTEE SHOULD BE ESTABLISHED TO INVESTIGATE COMPANY CONDITIONS AND CORRUPTION IN COAL MINING.

LETS PROSECUTE THOSE WHO ARE QUILTY BY NEGLECT AND GREED FOR THE DEATH OF COAL MINERS. SENATORS AND FELLOW CITIZENS THIS IS FIRE-GATE, A COVER-UP OF INCOMPETENCE AND CORRUPTION IN COAL MINING.

THIS FIRE-GATE WAS UNFORTUNATELY A PORTAL THROUGH WHICH 27 COAL MINERS PASSED AND DID NOT RETURN.

COAL MINERS DESERVE A BETTER CHANCE THAN THAT. THE ENTRANCE TO DAILY WORK SHOULD NOT BE A TRIP ONE MAKES INTO AN UNKNOWN WORLD OF INADEQUATE SAFETY, INCOMPLETE PROTECTION, AND MISMANAGMENT. EACH MINER MUST FEEL CONFIDENT THAT THE TRIP TO WORK WILL BE A ROUND TRIP BACK HOME TO THE LIGHT OF DAY AND LOVE FAMILY.

Senator HATCH. Thank you, Mr. Simonelli, for your statement.

I recognize that you are a party to a lawsuit, so we appreciate you coming and testifying and giving us the benefit of your viewpoints at this particular time. I do have a few questions I would like to ask you.

You mention that there have been other fires at Emery Mining Corporation mines. Would you just list these for us for the record so we can have them for the record?

Mr. SIMONELLI. I attended all the executive meetings, the monthly executive meetings of mine managers and the executive managers of the company. At one meeting prior to the Des-Bee-Dove fire, we learned that there was a fire in Deer Creek at a substation. I discussed this with Mr. Zeller, the CEO. He nor anyone in the downtown corporate office knew of that fire until it was reported weeks and weeks after it had actually occurred. Within the month, Des-Bee-Dove caught fire—some diesel equipment. This surprised me and shocked me.

Later, I went through some notes and talked to some of the other people, and there had been in fact, quote-unquote, "unreportable fires" because the duration was not half an hour. That is the problem, Senator, that this situation where these coal miners were at the mercy of not only the law, but a coal mine operator that had never mined a pound of coal in its entire history. It just hauled them through the road.

Senator HATCH. You indicated in your opening remarks that preventive maintenance was a problem here in the Wilberg Mine. Can you tell us whether or not the failure to have preventive maintenance could have led to the fire?

Mr. SIMONELLI. The preventive maintenance is crucial to understanding how the hell they can have a piece of equipment running for any number of hours without someone checking it, whether the oil and lubricant is properly filled in the machine; the fact that it is operating unregulated and unattended is clearly indicative that not only were they not checking equipment that was being used, but there was no concern about it. And the preventive maintenance cards and reports that I discussed and submitted to Mr. Savage and to Mr. Zeller and subsequently to Utah Power and Light private investigators clearly indicated prior to the Wilberg fire that Emery Mining Corporation was not performing any of the preventive maintenance jobs that it should have in a normal pattern of keeping up with normal maintenance. They were—excuse the phrase—but they were constantly putting out fires.

Senator HATCH. Now, did you submit actual written reports or statements to Mr. Savage, who was the President of Emery Mining Corporation, and to Mr. Zeller, the CEO or operator——

Mr. SIMONELLI. Yes, Senator, I did. I was directed by Mr. Savage to give him exclusively one copy and not keep any copies of most of my audit reports to him. Thinking that peculiar, I kept them in my work papers, which they eventually shred. I performed four substantive audits—one involving repair and maintenance, another involving the bonus and bingo plan, which also involved some of these unreported accidents. To get a bonus, if they had an accident, they would lose it. So what they did was they did not report some of the accidents. This really negatively influenced the view that we have of how safe Emery Mining was operating at the time of Wilberg. Men did not report accidents because they would lose a bonus. They would lose $300, $400, $500. So they would not report them.

Senator HATCH. Did you personally report your misgivings about these things to Mr. Savage and Mr. Zeller?

Mr. SIMONELLI. Yes.

Senator HATCH. You did it directly?

Mr. SIMONELLI. Directly to Mr. Savage, directly to Mr. Zeller, directly to Mr. Hamlin. God rest his soul, we went toe-to-toe a couple of times, because he told me that the only person that could kick his ass was Everett Winder, the Safety Department Director. And Everett was not doing his job, and he was quite upset with it. So we had some toe-to-toe conversations.

I said, "What the hell are you doing, then? Why don't you get on his ass or replace him?"

Senator HATCH. Mr. Hamlin, as I understand it, was Vice President of Operations.

Mr. SIMONELLI. That is correct, Senator.

Senator HATCH. He died in this fire.

Mr. SIMONELLI. Yes, he did.

Senator HATCH. Okay. How do you know that Mr. Savage discontinued these reports about safety and maintenance on the grounds that he did not like what they were saying? You have indicated that you feel that very strongly.

Mr. SIMONELLI. Senator, when Alex Poulos, also killed in the Wilberg Mine fire, had been the operations auditor, and I was the internal auditor, Alex and I were required by Neal Savage himself to give Neal the only reports that we were writing and to be his eyes and to be his ears and report all to him—almost spylike in our work.

Well, when Neal was displeased with what Alex was producing because it did not recommend solutions, but merely enumerated a litany of major problems in the underground operation, he stopped Alex Poulos from being the operations auditor, sent him underground, told me that he wanted me to follow both operations, sent me to an Institute of Internal Auditors seminar on how to conduct operations auditing in September of 1982, where I went, and I started writing reports in all phases of the company's activity and reporting such. And it was not until I reported that someone had taken a $110,000 loan from a vendor who was awarded a million-dollar contract for this insurance compensation plan that I was then stopped. I was stopped by Neal Savage, who had just stopped the operations auditor, and he stopped me because I was pointing out to him that one of his executives had taken a $110,000 loan after he awarded a million-dollar contract. And I did not learn until the investigative report, which I specified, by the State of Utah, that Neal Savage himself had taken $600,000 of loans himself. They had pledged $10 million of the total assets of $12 million of Emery Mining in loans to advance their own corporate empire.

[Course roster of people attending the Institute of Internal Auditors seminar follows:]

COURSE ROSTER

9/13/82

EW YORK CITY
OW TO PERFORM A SUCCESSFUL OPERATIONAL AUDIT

LOGAN,JACK JV.
NY STATE TEACHERS RETIRE
143 WASHINGTON AVENUE
ALBANY NY 12210

MASRI,JAWAD EL J.A.
ABDUL LATIF JAMEEL CO LTD
P.O. BOX 248
GEDDAH
SAUDI ARABIA

RUBIN,ELIOT GR
MUTUAL OF NEW YORK
1740 BROADWAY
NEW YORK NY 10019

SCHURTMAN,BEATRICE
TEACHERS INSUR&ANNUITY
730 THIRD AVENUE, 17TH FLOOR
NEW YORK NY 10017

SMITH,S. MARLA
WARNER LAMBERT CO
201 TABOR RD. CORP. AUD, MT PLST PK
MORRIS PLAINS NJ 07950

SWAYNE, ELIZABETH
OGDEN FOOD SERVICE CORP.
3660 S. LAWRENCE STREET
PHILADELPHIA, PA 19148

TAYLOR,ALAN
CAMERON IRON WORKS
P.O. BOX 1212, INTERNAL AUDIT
HOUSTON TX 77251

MARTINO,NANCY NM
WARNER LAMBERT CO
201 TABOR RD, CORP AUD, MT PLST PK
MORRIS PLAINS NJ 07950

H cov. 9/16
ROHRBAC~~K~~,DONALD DR
FED RESERVE BK OF NY
33 LIBERTY STREET
NEW YORK NY 10045

SANDIFORD cov. 9/16
~~[illegible]~~,CARLOS
AMERICAN INTL GROUP INC
99 JOHN ST., 8TH FL. AUDIT DEPT.
NEW YORK NY 10070

SIMONELLI,JAMES J. JJS
EMERY MINING CORP.
P.O. BOX 310
HUNTINGTON UT 84528

SPIEGEL,SUE
AFIA WORLDWIDE INSURANCE
1700 VALLEY ROAD, INT. AUDIT
WAYNE NJ 07470

TARAFDAR,~~KHATAN~~ RUSTAM
AMERICAN INTL GROUP INC
99 JOHN STREET, 8TH FL., AUDIT DEPT
NEW YORK NY 10070

TOZZI,ANN MARIE AMT
AMERICAN INTL GROUP INC
99 JOHN STREET, 8TH FL, AUDIT DEPT.
NEW YORK NY 10070

Mr. SIMONELLI. Senator, there is so much to this, and the State of Utah has spent almost $1 million investigating these allegations. There is a grand jury now in possession of all these documents. And the crime of it all is that Utah Power and Light hired investigators who were my superiors in the IRS when I was in New York and in Utah to debrief me and get this information in May of 1984. And I reported what I said here to them. And we spent days. I debriefed with them for days, telling them everything I have said. There is not a new thing in here that I have not said in depositions or to investigators who have been investigating this since I went public with it in May of 1984.

Senator HATCH. Yes, they do show up in the report. I have to admit that.

Now, you state that after the Des-Bee-Dove fire that you described here today that you were asked to fabricate the mine's logs.

Mr. SIMONELLI. That is correct, Senator.

Senator HATCH. Could you elaborate on that for us?

Mr. SIMONELLI. They did a damn lousy job——

Senator HATCH. "They" meaning——

Mr. SIMONELLI [continuing]. Emery Mining—the managers up at the mine in Des-Bee-Dove. They did not keep a proper log. They did not record when the men went in, when the rescue crews went in, the fire fighting crews went in, and when they came out, accurately and properly. They did a half-assed job at it.

A few weeks later, Zeller came to me and he said, "Look, we have got to do a few things. We have got several people in an interview with Armando Miles, the guy who operated the diesel equipment that caught fire. You write one memo from all these people's notes." So I went to the maintenance director, I went to the safety director, I went to Jim Hamlin, I went to John Forbush. I went to several people who had notes on this guy. I put one report together. In addition, the log, which was inaccurate and incomplete, I was asked to complete the log A to Z, and in addition produce a second log, which was cleansed of some of the poor decisions and statements that would be made so that the cleansed version, merely who went in and when they came out, could be given to the UMWA and fabricate—and by that I mean there were certain crews that I told to Mr. Zeller had not come out, and as far as I knew, they were dead inside the coal mine, because the records indicated they went in and they have not come out.

And in addition and in summary, I told Mr. Zeller that he was lucky this time no one was hurt, but next time he would not be so lucky, and he would kill people. And that is exactly what happened in Wilberg.

Senator HATCH. How many times did you go down into the Emery Mining Corporation mines and specifically how many times did you actually go down into the Wilberg Mine?

Mr. SIMONELLI. I went in Emery Mining Company's mines during and prior to my employment, probably about 20 times, and I would say I went in Wilberg between 6 and 10 somewhere.

Senator HATCH. Did you observe fire hazards each time you went down into the Wilberg Mine?

Mr. SIMONELLI. That is a curve ball, because I did not know what some of them were at the time. I know now that some of the things

I observed and then learned later as I had been through the mine several times, I started learning what was a violation. And I learned, but I cannot say that I learned right from the first time I entered the coal mine. I started learning as I was being escorted through the various mining activities.

Senator HATCH. Okay. Now, Mr. Simonelli, why do you think insufficient action was taken on your recommendations?

Mr. SIMONELLI. The UP&L and Savage arrangement goes far further than this Emery Mining Corporation arrangement, and I was the one who was pointing out all the rotten apples to the people who were in the barrel, and they did not like it. So they did not want to start pointing fingers at one another, because they are all guilty of some misdeed. They did not want to hear the truth, Senator. They just simply did not want to hear it.

Senator HATCH. Well, Mr. Simonelli, if Emery Mining Corporation had acted on your suggestions, do you think that 27 people's lives might have been spared?

What is your opinion on that?

Mr. SIMONELLI. Senator, when I told them about the Des-Bee-Dove fire, they treated it as if it was nothing. They did not care. They do not care about the lives of coal miners. That is the disgrace of it. They treat them like just so much of a resource they can use to mine more coal. Yes, it could have been prevented had Emery Mining and Utah Power and Light taken responsible action for its own behavior—not anything based on what I said; an average, normal, intelligent human being can judge what it is doing right and what it is doing wrong. They just did not care.

Senator HATCH. Mr. Simonelli, let me turn to Congressman Nielson for any questions he has.

Mr. NIELSON. Yes. Mr. Simonelli, what is your hands-on background in coal mining itself?

Mr. SIMONELLI. No mining activities or mining job itself.

Mr. NIELSON. You just made a very serious charge, saying that if they had followed your recommendation, those 27 men would be alive today.

Did you make any recommendation about that caved Sixth Right?

Mr. SIMONELLI. I am trying to remember when I learned about that cave in Sixth Right. I do not think I was employed by Emery Mining when that happened.

Mr. NIELSON. Yet the previous panel said that most of the men and the woman might have gotten out had that Sixth Right been cleared, and yet you did not make any recommendation in that area.

Mr. SIMONELLI. I was not employed by Emery Mining at that time, sir.

Mr. NIELSON. But when was it actually caved?

Mr. SIMONELLI. I think Don Cologie said when they were on strike in late 1984.

Senator HATCH. It was October of 1984.

Mr. SIMONELLI. I was not employed at that time, sir.

Mr. NIELSON. So even if you had made all the recommendations which you were capable of making, admitting that you missed some of them, you did not know they were violations—even if you had made all those recommendations, they still would have had the problem with the cave-in, is that correct?

Mr. SIMONELLI. I cannot answer your question, Senator.

Mr. NIELSON. But you just did answer the Senator's question, saying that if they had followed your recommendation, those men would be alive today.

Mr. SIMONELLI. I think I gave that a qualified positive answer, yes.

Mr. NIELSON. Okay. But the point was the event occurred after you were there, and you are not, of course, responsible for what you did not see. But the point is if we believe the previous panel—and I believe the previous panel—most of them could have gotten out if that Sixth Right had been open. And yet your recommendations refer to things other than that which had less to do with their being unable to escape.

I just want to point out that maybe you went a little too far——

Mr. SIMONELLI. No, I did not go a little too far, Congressman. I have not gone far enough, because when that cave happened in Sixth Right——

Mr. NIELSON. No, no. Let us stick with the question. The question is if they had accepted all of your recommendations would they be alive today, and the answer is no, they would not be alive today because the main cause of the death was the Sixth Right closure, and you had nothing to do with that, no knowledge of that; is that correct?

Mr. SIMONELLI. Senator, you are putting me in a question spot that I cannot quite frankly answer without explaining it. I cannot give you a yes or a no——

Mr. NIELSON. I think you can.

Mr. SIMONELLI [continuing]. Because if that area had collapsed, and they had evacuation plans, and they had practiced it, and they had the responsibility to report that cave to the Union before they came back from strike or at the time they were on strike to advise the Local, the Union would have had an opportunity to object to it or do something about it.

Mr. NIELSON. We will discuss that with MSHA and others later. But I did want to point out that when you are so quick to answer the Senator's question that if they had accepted your recommendations, it would have solved the problem, I wanted to point out it would not have solved the problem; it would only solve a very small portion of the problem.

Mr. SIMONELLI. That answer is yes, Senator. I will say yes to that question.

Mr. NIELSON. You made the accusation that Emery Mining was the most novice and inexperienced coal mine operator in the State, and they had never mined coal before. Can you substantiate that statement?

Mr. SIMONELLI. I have the reports right behind me; $900,000 spent by the State of Utah. Neal Savage was deposed. They asked him if he mined coal, did any of his brothers mine coal. The answer was no, not one pound. They said it, not me.

Mr. NIELSON. Okay. Let me ask another question. On the Des-Bee-Dove fire, the Des-Bee-Dove fire, as I recall, burned almost a year. Once it started, it took about a year to get it out, and they never did reopen that mine for coal mining, unless they have done it very recently. Is that correct?

Mr. SIMONELLI. I do not know that, Congressman. It burned for a long time.

Mr. NIELSON. But you do know that the fire was there for about a year.

Mr. SIMONELLI. Yes.

Mr. NIELSON. I talked with the previous safety inspector from the previous company, previous to Emery Mining, a man named Mr. Day, which I can substantiate if you want me to, who said it would be almost impossible to start a fire in Wilberg. What is your explanation for the fire? Do you accept the explanation given by MSHA?

Mr. SIMONELLI. I have not seen MSHA's report, Congressman. I do not know what their explanation is.

Mr. NIELSON. Okay. Thank you.

Let me ask how much of your anger at Emery and Utah Power and Light is based on your personal problems with them and the fact that you have an ongoing suit against them and that they basically ran you out of the State, and basically, you are having to recover gradually from Georgia or wherever it is you are at—how much of it is personal venom as opposed to objective reporting?

Mr. SIMONELLI. I am damned pissed off at them, there is no doubt about that. Do not mistake that, Congressman. But I am an honorable and upfront person. I will not allow my dislike for them to influence the facts involved in this case.

So, no, I did not and I am not influenced by my anger from saying something that is not true. They sued me because of what I said in a hearing room like this in Utah in August 1984. And then they killed 27 people.

Mr. NIELSON. You made another comment that the very Public Service Commission that had your case was appointed by Governors Rampton and Matheson. Are you correct on that? Mr. Rampton has been out of office for about 12 years now. None of the Commissioners on that panel would have been appointed by him, would they?

Mr. SIMONELLI. Just prior to the Commissioner that Matheson replaced for Rampton, that coal hearing I believe was being held by the Commissioner who Rampton appointed. Rampton is representing the shareholders, and Scott Matheson is on the law firm that represents Emery Mining, and they are involved in this case before the PSC. How can you get justice from Governors who have appointed these men?

Mr. NIELSON. I am asking about Governor Rampton. Were there any Commissioners that he appointed who were involved in your hearing?

Mr. SIMONELLI. In the coal case, if that can be considered my hearing, yes.

Mr. NIELSON. Even though he had been out of office for six years by the time you had these hearings?

Mr. SIMONELLI. You might have caught me on that one, Congressman. I am not sure whether the 1982 coal case involved a Commissioner that was appointed by Rampton.

Mr. NIELSON. Now, as to Governor Matheson, it is true that he is on the law firm representing Emery Mining. However, is it also true that he is opposing Utah Power & Light as far as preference for Colorado Storage projects? It seems that——

Mr. Simonelli. Then why did they ask him to be the president?

Mr. Nielson. Now, just a minute. Let me finish the question. I am saying he is vigorously opposed to their action, as we are, as far as the preference is concerned.

What I am saying is isn't it possible that Governor Matheson can take an advocacy for them in one case and oppose them in other cases?

Mr. Simonelli. No, because he just advised Neal Savage not to come, because he would not get a subpoena. This hearing did not have the commitment to this.

Mr. Nielson. Now, you are bringing other things in, Mr. Simonelli. I would like to——

Mr. Simonelli. You keep asking me questions, and I will keep bringing more in, because there is more to this.

Mr. Nielson. I am asking the question. You are suggesting that Governor Matheson is acting improperly, and that he appointed these Commissioners who are following his line. And frankly, he has been out of office for three years now. Why would the present Public Service Commissioners be following a line of a Governor who no longer serves and they are no longer involved with? In fact, two of the three were appointed by the present Governor Norm Bangeter.

It seems to me like you are weaving too much of an evil strain of thought here.

Mr. Simonelli. It sounds almost incredulous——

Mr. Nielson. It does, to me.

Mr. Simonelli [continuing]. But how do you deal with Commissioners and directors of the division who call the president of UP&L and ask if it is okay to do something and have——

Mr. Nielson. Do you have proof of that?

Mr. Simonelli. I was there when a phone call was made from Gene Lambert's office, the director of the Division of Public Utilities, to Utah Power & Light, to have me go and see Harry Blundell, or to go to see Utah Power and Light and discuss with them some possibility of a job for the allegations that I was raising and the concerns I had.

Senator Hatch. Let me interrupt for one second.

Mr. Nielson. I think I have finished.

Senator Hatch. I do not want to interrupt you. I just want to make the record straight. The reason we did not subpoena Neal Savage is because we had a commitment for him to come. So I just wanted to clarify that. In other words, he could come regardless, and he is here today.

Mr. Simonelli. And I understand and appreciate that, Senator. But the statement I heard was that Scott Matheson advised him not to come, that you would not subpoena him, and that he would get off the hook without coming.

Senator Hatch. If he had been unwilling to come, we would have subpoenaed him. I do not think there is any question about it. I just want to make that clear. But he has voluntarily come here today.

Mr. SIMONELLI. Senator, I want to thank you and your staff, because your staff was instrumental in finding out the truth and the depth of all that I had said previously and all that I testified to prior to the Wilberg fire. It was your staff that had the courage to ask me the question. And they put me through a wringer, and I have been put through a wringer by your people before I arrived here. I did not have too much of a hot attitude for you before, but I like you now. [Laughter.]

Senator HATCH. Join the crowd, Mr. Simonelli.

Mr. NIELSON. If the Senator will allow me, it appears that he now is taking after one of your potential opponents, Mr. Matheson, and even though Mr. Matheson is the opposite party, I am trying to defend his honor, because it seemed to me you were accusing him of some rather dark misdeeds. And certainly Mr. Rampton, who was out of the picture for some years before, it was certainly not wise to bring his name up, either.

Mr. SIMONELLI. Can I please say something, because when I reported certain things that I thought were good for the State of Utah, Scott Matheson bragged about it in the newspaper—I have got the article over here—how good he thought the suggestions I had were. But when I tried to get hold of him after the Wilberg fire and before the Wilberg fire to talk to him about misdeeds at UP&L and his appointed PSC, not one phone call from the guy, not a return, not an aide, nobody called me. Why? Because he did not give a damn, either.

Senator HATCH. Well, let me just say this. We have appreciated having your testimony and your point of view. You are one of the principal players here; there is no question about it. I also think Congressman Nielson has brought out some pretty good facts, too, this business of the fact of the cave-in, which I think needed to be brought out, and he did a very good job of doing that.

But your testimony today has been very much observed. It is going to be part of this record. And I personally, and I am sure Congressman Nielson feels the same way, am very happy that you have taken time to be with us.

Mr. SIMONELLI. And I gather my records are part of the submission of the testimony.

Senator HATCH. Yes, we will include those as part of the total hearing record this day.

Mr. SIMONELLI. Including my photographs of some mine violations which I have in Wilberg. I have the escape routes that are blocked.

Senator HATCH. We will be happy to make that part of the record.

Mr. SIMONELLI. Not Fifth, Seventh.

Senator HATCH. You bet.

Mr. NIELSON. In spite of my interrogation methods, Mr. Simonelli, I am happy you came, and I appreciate your testimony.

Mr. SIMONELLI. Please excuse a little of my anger. I really am upset because of the way this thing has gone down with me. They are still suing me for what I said in 1984, which has proven to be true.

Senator HATCH. I see.

Well, thank you, Mr. Simonelli. Excuse me—we want to make sure that you are still available if we need any further testimony after the end of this hearing.

Mr. SIMONELLI. I am available and anxious to testify and discuss any of this in any forum that any authoritative board can do. We need action.

Senator HATCH. Thank you, Mr. Simonelli.

Our next panel will include witnesses from the Mine Safety and Health Administration. They will be led by Alan McMillan and John Barton. We are happy to welcome you to the Committee, gentlemen. We look forward to taking your testimony and going from there.

Mr. McMillan, we will take your testimony at this time.

STATEMENTS OF ALAN McMILLAN, DEPUTY ASSISTANT SECRETARY FOR MINE SAFETY AND HEALTH, AND JOHN W. BARTON, COAL MINE SAFETY AND HEALTH DISTRICT 9 MANAGER, DENVER, CO; ACCOMPANIED BY DON HUNTLEY, CHIEF, INVESTIGATIVE TEAM; ED CLAIR, ASSOCIATE SOLICITOR; AND THOMAS J. SHEPICH, DEPUTY ASSISTANT SECRETARY, MSHA

Mr. McMILLAN. Good morning, Senator Hatch.

I am Alan McMillan, the Acting Assistant Secretary for MSHA. I have with me in addition to Mr. John Barton on my far left, whom you asked for, to my immediate left is Don Huntley, the Chief of our Investigative Team; to my right is Ed Clair, our Associate Solicitor, and to my far right, Tom Shepich, our Deputy Assistant Secretary of MSHA.

I am pleased to appear before you today to review MSHA's preliminary findings regarding the tragic Wilberg Mine fire, which claimed 27 lives on December 19, 1984. There are few words that can adequately express either the sorry or the frustration we at MSHA feel when disasters such as this occur.

Indeed, each time a miner is fatally injured, disabled or loses work because of an accident in a mine, we are reminded that our work is not completed and that all of us who are involved in the mining community must redouble our efforts, review our activities, and determine what can be done to prevent future occurrences.

Secretary Brock and I recognize the efforts and concerns of Chairman Kennedy, you Senator Hatch, and other Members of this Committee, and Representative Nielson, and appreciate this hearing so that we can in this forum present our findings and share with you the preliminary report of our investigation into the causes of the Wilberg Mine fire.

On December 19, 1984 shortly after 9 p.m., a fire broke out in Emery Mining Corporation's Wilberg Mine near Orangeville, Utah. The mine had three sections which used continuous mining machines to remove the coal and two longwall panels. Access to one longwall panel was by the so-called Fifth Right section.

When the fire broke out, 28 of the 80 miners underground were in the Fifth Right section. The fire was detected by an employee who saw smoke in the intake air entry and notified personnel on the surface by telephone. The Fifth Right section was informed but evacuation was delayed to allow further evaluation of the situation.

The fire originated at an air compressor which was located near the mouth of the Fifth Right section on the intake-air entry that supplied ventilating air to the Fifth Right. Smoke and gases from the fire were carried by ventilating air to the mine's Fifth Right section. Twenty-seven miners died as a result of the fire. Only one miner was able to escape.

Responsible officials of Emery Mining Corporation, the United Mine Workers of America, the Utah State Mine Inspector's Office and MSHA cooperated in the planning and decisionmaking throughout the rescue attempt. Successive teams sought to enter Fifth Right over the next three days to locate the 27 missing miners.

On December 23, the fire flared at the entrance to Fifth Right, and the firefighters and rescue teams were ordered out of the mine. As all parties agreed that there was no hope for the two missing victims and the fire could no longer be fought safely, the openings of the mine were sealed to deprive the fire of oxygen.

MSHA began its formal investigation into the accident December 27, 1984, the purpose of which is to determine the cause of the accident and to prevent future similar occurrences.

Officials of Emery Mining Corporation, the United Mine Workers of America, Utah Power & Light cooperated in the investigation. MSHA also worked closely with the Utah State Mine Inspectors Office, the Emery County Sheriff's Office, the Utah State Fire Marshall's Office and the Federal Bureau of Investigation.

Because the mine was sealed, and evidence indicated the fire was still smoldering, MSHA's initial efforts were concentrated on obtaining and reviewing mine records and other documents and on conducting extensive interviews with management and miners.

Recovery at the mine began February the 13th, 1985. The primary objectives were to recovery the victims' bodies and enter the fire area to complete the investigation of the accident. The recovery process was necessarily slow to assure the safety of those individuals involved in the recovery effort.

Additionally, the condition of the mine, which had deteriorated over time, complicated the effort. The bodies of the two missing victims were located and all the bodies were removed from the mine December 11, 1985. MSHA was able to complete the onsite investigation by August 18, 1986.

On March 24, 1987, MSHA issued its preliminary report and issued a total of 34 citations to Utah Power & Light, 9 of which were determined to be contributory to either the cause or seriousness of the accident.

It is our conclusion that the fire originated at the compressor, which had been improperly installed and maintained. MSHA has issued the following citations as contributing to the cause of the fire: First, the failure to properly maintain the on-off control switch and the over-temperature switch on the air compressor, and second, failure to conduct frequent examinations of the air compressor, allowing the unsafe condition to go uncorrected.

Contributing to the seriousness of the accident were seven additional violations. At the same time, MSHA actively began a special investigation into the Wilberg Mine fire to determine if any of the violations cited were knowingly or willfully committed.

Personnel from MSHA's special investigative unit have been involved with the accident investigation team throughout their activities. However, it was not until the violations were identified and issued that a final determination could be made as to whether a special investigation was warranted.

Personnel from MSHA's special investigation team and the solicitor's office have already held discussions with representatives of the U.S. Attorney's office in Utah. As a result of the accident and investigation, MSHA has taken several actions to reduce the likelihood of similar occurrences.

I am almost finished, Senator.

Senator HATCH. Take your time.

Mr. McMILLAN. First, a five-month moratorium to prevent any expansion of two-entry mining was imposed. During the moratorium, a task force comprised of MSHA and the Bureau of Mines personnel conducted a study of the two-entry longwall mining methods. The task force issued its report in April of 1985, which concluded that two-entry longwall mining is feasible if suitable safeguards are put in place.

Also, MSHA conducted an evaluation of the self-contained self-rescuer training being provided at over 1,000 underground mines and, as a result of that evaluation, we required additional training at more than 200 mines.

Further, MSHA district managers were instructed to reemphasize the review of firefighting and evacuation procedures at all underground mines and reminded of the need to follow the formal petition process to modify the application of a specific standard.

MSHA has also notified mine operators that the requirement for air compressor stations to be in fireproof enclosures has been clarified and that compressors using combustible fluids must be equipped with automatic fire suppression devices when operating unattended.

In addition, we are encouraging mine operators who use aluminum overcasts to put a coating material on these structures to improve their durability in a fire. Future ventilation plans will require such structures to have substantial ability to withstand damage.

We are hopeful that these actions, along with others we have initiated and will initiate in the future, will result in improved safety and health conditions in the Nation's mines and help prevent future tragic events.

Mr. Chairman, that concludes my prepared statement. At this time, I would like Mr. Don Huntley, on my left, to discuss in more detail the findings of MSHA's investigation into the causes of the fire. He will be assisted by Mr. Painter, a member of the team, who will identify various locations on the map of the critical areas in the mines.

Mr. HUNTLEY. Thank you, Alan.

Mr. Chairman, Congressman Nielson, I appreciate the opportunity to present the findings of MSHA's investigation into the cause of the tragic Wilberg Mine fire. I would like to first briefly review the rescue and recovery operations and some of the factors involved in an investigation such as this.

Upon notification of the fire on December 19, 1984, MSHA personnel were immediately sent to the site. MSHA's mine emergency operations group sent personnel and equipment. Mine rescue teams from several mining companies volunteered in the rescue effort.

As Mr. McMillan stated, the struggle to fight the fire and locate the missing miners continued for three days before all parties agreed that it was too dangerous to fight the fire directly, so the mine was sealed. The recovery operation began in February 1985. This was very early. Still, it was almost a year before the bodies of the victims were removed from the mine.

The recovery process was arduous, involving air-locking and exploring limited areas while using self-contained breathing apparatus. Various recovery routes had to be abandoned because of massive roof falls or rekindling fires. Eventually, new entries had to be driven because of damage to existing passageways.

The recovery teams worked continuously but carefully so as not to endanger other lives. It was not until July 1986 that the area where the fire originated was accessible for examination.

MSHA's investigation into this accident actually began when the first inspector arrived at the site. The investigation was a painstaking process which involved many experts and specialists from the various segments of our organization.

Other governmental entities and the private sector were also involved. The onsite underground investigation, which could not be completed until August 1986, consisted of detailed examination of the affected area of the mine, particularly the accident area, to determine the origin of the fire and the circumstances surrounding it. Extensive mapping was conducted, evidence gathered, equipment tested, and so forth. All of the information and data was thoroughly analyzed.

In addition, MSHA's team investigated the mining conditions and practices to determine if there were any other factors which contributed to the accident or to its magnitude. The team held 25 days of interviews during which formal statements were taken from 95 individuals. The evidence that we have compiled, analyzed and/or tested has led to our conclusion that the fire started at the Fifth Right air compressor.

The evidence supporting the air compressor as a source of the fire is overwhelming. However, I believe it is important to discuss briefly some of the other suggested causes of the fire and why our investigation determined they were invalid.

Electric cables and equipment were considered as a possible fire source, but were eliminated for several reasons. Physical factors surrounding the cables and equipment were evaluated. The cables and equipment were thoroughly tested and examined. The damage they sustained was determined to have been caused by the fire instead of causing it.

Consistent with the physical evidence was testimony that the equipment in the vicinity of the compressor was energized for about ten minutes after the fire was discovered, and the compressor itself continued to operate after the fire started. This means that the fire started before any electric fault occurred.

Another suggested source of the fire was the belt conveyor. There were several people in the belt entry who supported no smoke or fire in this entry while dense smoke and fire was in the separated intake entry. The evidence we have analyzed indicates that there was no smoke or fire in this belt entry until the overcast failed or smoke entered with the normal air flow.

During the early stages of the investigation, the possibility of arson or sabotage was also considered. The FBI, State arson investigators and the county sheriff conducted extensive investigations. They, too, reported that the fire was accidental and that it started at the air compressor.

Next I will offer a brief overview of some of the evidence which illustrates why the compressor was the cause of the fire.

Testimony reveals that the fire was discovered near the compressor. As observed or reported, the fire spread rapidly downwind, but did not spread upwind against the high velocity air flow. This is the normal direction a fire would spread under these conditions. Therefore, the place where the fire was found was also the place it started—at the compressor.

The condition and use of this air compressor were also important factors in identifying it as the source of fire. The compressor was operated intermittently for about three weeks without a temperature safety switch or an on-off switch. On December 17, the compressor was unnecessarily started and left operating. After running for almost three days without any attention, it finally caught fire.

I should point out that the compressor would not have been started on December 17 if the on-off switch was in place. Further, it is most likely that the fire would not have occurred even with the compressor operating in this manner if a temperature safety switch had been part of the electrical circuit.

Senator, I have considerably more to present, and I would like to present it if I may.

Senator HATCH. Go right ahead. I think it is important enough that we just have to get it in the record.

Mr. HUNTLEY. Thank you.

The compressor was equipped with such a switch, which shuts down the compressor before it overheats. However, this switch was deliberately bypassed three weeks before the fire by changing the wiring so that the compressor could be operated. Management knew the compressor was unsafe, but permitted its use if attended.

As part of our investigation, we engaged an independent testing laboratory to examine and test the critical air compressor parts. They report that the compressor apparently overheated from prolonged operation at no or minimum compressed air flow. They described fire starting at the compressor rotors and escaping through the pressure release valve on top of the machine which was damaged by internal presssure from the fire.

A fire starting in this manner would create the effect of a flamethrower and spread rapidly to the nearby coal. In addition, following MSHA's announcement that the air compressor was the cause of the fire, MSHA engaged John Nagy as a consultant. Mr. Nagy is a renowned mine fire expert, having spent his entire 42-year career, most of it with the Bureau of Mines, researching and investigating mine fires and explosions. His independent study is a very exacting analysis of the Wilberg fire and concludes that the fire started at the compressor.

Now I would like to discuss some factors that help to explain the large loss of life. Eighty miners entered the mine at 4 p.m. the day of the fire. Six miners and a foreman were added to the regular crew of 14 in Fifth Right longwall panel to help set a production record.

The Vice President of Operations and six other top management officials were also on the section. When a pre-shift examiner entered the area about 9 p.m., there were 28 people on the panel. The fire started about midshift. It spread rapidly into the Fifth Right intake airway because the compressor was not provided with fire suppression equipment and was not housed in a fireproof enclosure.

The fire was discovered very soon after it spread to the intake airway by Paul Salisbury, who was making a routine delivery to Fifth Right. He encountered smoke in the intake airway, so he turned his vehicle around and travelled about 1,200 feet to a mine phone. At almost the same time, two other miners observed smoke in the intake entry under the belt overcast, about 160 feet downwind from the first observation.

One of the miners tried unsuccessfully to call Fifth Right on the nearest mine phone. This phone was later found to be defective.

Mr. Salisbury used the mine phone at Crosscut 39 to report his observation of smoke to surface personnel. One of the victims who was near the headgate on Fifth Right and another miner at Crosscut 25 on First North joined the conversation. There was a question about whether it was steam instead of smoke, and it was decided to investigate further.

Mr. Salisbury went back to Number 4 entry, then returned to the mine phone to report seeing flames as well as smoke. This extra trip took about 5 minutes.

These actions and the defective equipment took valuable time and delayed the start of the evacuation. Only one of the 28 miners on Fifth Right survived. His testimony describes in detail his treacherous route and the miners he encountered. During the 3 days of rescue attempts, nine victims were found in the dogleg entry, the route that the sole survivor used. Four other victims were found between Crosscuts 5 and 7 in Fifth Right belt entry. Mine rescue teams also found eight victims at the longwall headgate, two in the intake airway and two others in the return airway.

When the rescue attempt had to be abandoned, two miners were still missing, but all parties agreed that they could not have survived. The bodies of the two remaining victims were found in December 1985, one in the return airway and one in the bleeder entry.

The route travelled and activities of the 27 miners has not been and probably never will be determined fully. It is clear, however, that the miners would have had a much better chance of survival had they started evacuation when the first warning was received.

The condition of the escape routes also tragically contributed to the loss of life in this fire. One of the designated escapeways was the intake airway. It was smoke-filled before the fire was even discovered, and the fire and heat made it totally impassable before evacuation started.

The other designated escapeway was the belt entry. Contamination of this entry began earlier than it should have because there were holes in three of the stoppings that separated it from the intake airway.

This entry became impassable outby Crosscut 5 when the belt overcast failed. This overcast was constructed of aluminum and failed much earlier than most other ventilation control structures would.

The 6th Right entry Fifth Right return airway had been impassable for several months because of a roof fall. The mine operator notified MSHA in writing of this roof fall and their procedure for making required weekly examinations of the airway. The examination procedure was accepted as complying with the regulations. Many miners were also aware of the condition in this entry.

The bleeder entries to First North intake escapeway could be travelled, but there was an area of restricted space where travel was difficult. Since bleeders are not normally used for travel, most miners are not familiar with them. Even though this was an unlikely escape route, one victim used this travelway almost successfully.

The belt entry to Crosscut 5 and through the dogleg seems to have offered the greatest potential for escape, mostly because it was the shortest and easiest to travel. According to a computer simulation and other studies, the miners travelled in smoke-filled passageways nearly the whole time they were trying to escape, and the travel routes contained areas with a deadly combination of carbon monoxide and reduced oxygen.

Even with smoke-filled travel routes that contained a deadly atmosphere, our investigation concludes that more miners could have survived if self-rescuers could have been promptly and properly used.

Mr. Chairman, I have presented some of the important factors used by the investigation team to determine the cause of this tragedy and what we believe contributed to its severity in terms of loss of life. This has been a complex and difficult investigation—complex from a legal and technical standpoint; difficult from a humanitarian standpoint. No matter how often we are involved in mine accidents, it seems we never overcome the feeling of personal loss when fellow miners are killed.

Thank you, Senator.

Senator HATCH. Well, thank you, Mr. Huntley.

Let me put in the record at this point a statement by Lamar E. Guymon, Sheriff of Emery County.

> Dear Senator Hatch, Our office, in conjunction with the Federal Bureau of Investigation and the Utah State Fire Marshal's Office, conducted an investigation of the Wilberg Mine fire. Our mission was to rule out or prove arson as the cause of the fire. After interviewing everyone that might have information regarding the fire, doing polygraph examinations on several individuals and investigating the Fifth Right area of Wilberg Mine, it was our determination that the fire started in an overheated air compressor that had been left running and unattended. Arson was ruled out as a possible cause. If you have any further questions, please feel free to contact me.

This is dated April 15, 1987, and we will put it in the record at this point.

[The letter referred to follows:]

LAW ENFORCEMENT
AMBULANCE • FIRE

Emery County Sheriff's Office

SHERIFF LAMAR E. GUYMON
DEPUTY

April 15, 1987

THE HONORABLE ORRIN G. HATCH
UNITED STATES SENATE
Washington, D.C. 20510

Dear Senator Hatch:

Our office, in conjunction with the Federal Bureau of Investigation and the Utah State Fire Marshal's Office, conducted an investigation of the Wilberg Mine Fire. Our mission was to rule out, or prove arson as a cause of the fire.

After interviewing everyone that might have information regarding the fire, doing polygraph examinations on several individuals, and investigating the 5th Right area of Wilberg Mine, it was our determination that the fire started in an overheated air compressor that had been left running and unattended. Arson was ruled out as a possible cause.

If you have further questions, please feel free to contact me.

Sincerely,

Lamar E. Guymon

LAMAR E. GUYMON
SHERIFF OF EMERY COUNTY

kj

Emery County Sheriff • P O Box 817 • Castle Dale, Utah 84513 • Telephone 381-2404

Senator HATCH. Now, Mr. McMillan, following the Wilberg disaster, your predecessor at MSHA, Dave Zegeer, established a task force of mining experts that came from Government, from industry and from the United Mine Workers Union, in order to study the two-entry mining system.

The task force issued a report, as I recall it, on June 12, 1985, finding that the two-entry technique can be justifiable mining procedure, but that it should be permitted only after various safeguards contained in the report had been considered.

Do you agree with the findings of the task force?

Mr. MCMILLAN. By and large, Senator, I do. I might also add that while the task force was conducting its review, a moratorium was put in place also on the two-entry development until the findings of the task force could be brought forward.

Senator HATCH. Okay. Now, the report urged MSHA to adopt longwall mining standards. It said that given the current limited applicability of some existing standards and the absence of standards in critical areas such as escape from the tailgate entry, consideration should be given to drafting standards specifically applicable to longwall mining.

Now, have these standards been issued?

Mr. MCMILLAN. They have not, Senator.

Senator HATCH. Why not?

Mr. MCMILLAN. Basically because we have two ways to address the safety concerns of two-entry longwall development. One way is to require that all operators wishing to employ this method do so through the formal petition for modification process. That process allows us to take a look at each request on a case-by-case basis, to evaluate it against the criteria in the task force report, and to only approve those that convince us that they are going to put in place the necessary protections outlined in that task force report or other protections that we may feel are necessary.

Senator HATCH. Let me ask you this. Can standards like this be tested or enforced in a court of law if the underlying regulations have not been issued or formulated in accordance with the required proceedings or standards?

Mr. MCMILLAN. If I understand your question properly, Senator, the answer is yes that they can. If we have a company that says we want to do two-entry longwall mining, they then come in with a petition for modification which spells out the protections that they will put in place. We will then review and approve the petitions. Then we will hold them accountable to meeting those required protections.

Senator HATCH. Well, if the company challenges the standards, and there are no regulations in place, how in the world can you enforce them?

Mr. MCMILLAN. If they challenge the requirements in the sense that they say, "We do not want to put these protections in place to do two-entry," then we will not approve the petition to go forward.

Senator HATCH. But without regulations, can you stop them?

Mr. MCMILLAN. Yes; until they submit a petition which we can approve, we will not allow them to go forward. Basically, we could have a standard, and we have not ruled out the fact that maybe a standard might be a good way to go forward for the long term. But we certainly have what we believe is a very effective mechanism to handle the very few cases in which a two-entry system is going to be used by an operator.

I might add also, Senator, that out of the more than 1,700 underground coal mines in the country, there are 11 two-entries. That is it. Eight of the 11 are approved under the petition process, in other words, where they have laid out exactly what they are going to do item by item, and we have approved it. If they do not follow it, then we have the authority to stop that operation.

Three of them have been in existence since 1970 and operate under the grandfather provision for mines that existed prior to 1970 that said if they were already in place, they could continue to operate. But even with those three that exist under the grandfather provision (in effect prior to 1970), we have through the ventilation plan approval process gone back and required them to put in place the safeguards that we feel are necessary.

Senator HATCH. Okay. But there are 10 or 11 mines that these modifications apply to. What about the approximately other 90 mines that are not covered? In other words, why can't you get the regulations out? Why the delay? You admit a moratorium. Why have a delay about it?

Mr. MCMILLAN. As I indicated, we have not ruled out promulgating regulations.

Senator HATCH. I think you should not only act to not rule them out; you ought to get them done. I mean, my gosh, you have got 27 people killed here; you have got all kinds of problems. It seems to me you have got to issue regulations so the mine operators know what they have got to comply with.

Mr. MCMILLAN. Senator, I do not discount that at all.

Senator HATCH. Well, fine. Look, I am not trying to give you a rough time. What I want to know is why in the heck don't we have regulations here. I mean, you have had quite a bit of time.

I mean, you cannot operate just on setting standards. You have got to have regulations. You have got to tell the people what to do. You have got to satisfy all parties.

Mr. MCMILLAN. We do have a regulation as it relates to the fact that we require them to have a petition for modification.

Senator HATCH. Yes, but you do not have regulations with regard to two-entry mining systems and so forth and how you solve these types of problems.

Now, I am not telling you what to put in the regulations. I am saying you ought to at least get them done.

Mr. MCMILLAN. I understand that, Senator, and again, I am not trying to be argumentative at all.

Senator HATCH. Neither am I. I cannot understand for the life of me why that is not done.

Mr. MCMILLAN. Your point is a good one. We have taken interim steps to make sure that two entry mining systems are done safely.

Senator HATCH. Okay. When are we going to have it, then. If my point is a good one, why have we waited 2 years to have it done? And I know it is not your fault. I do not mean to be yelling at you. But by gosh, you have got to yell at MSHA. Why isn't it done? When are we going to get it done?

What is the time limit? Give me the day, or at least give me an approximate date.

Mr. McMillan. I cannot give you a date today, but I will give you feedback as soon as a date is set or established——

Senator Hatch. No, no, that is not good enough. I want a date. If you cannot give it to me today, then you give it to me by Friday. And if I do not have it by Friday, we are going to have another hearing up here.

Now, is that so tough to do? Do you need more time to give me a date?

I want to know why.

Mr. McMillan. I do not think I need more time than Friday to give you a response.

Senator Hatch. Then you give me a date by Friday when you are going to have these regulations done.

You know, we are not talking about carpentry; I worked in that profession long enough, and that is tough enough. We are talking about underground mining. We are talking about the deaths of 27 people. We are talking about preventing it in the future.

Mr. McMillan. I will give you a response by Friday, Senator.

Senator Hatch. I do not want a response. I want a date. And I want that date delivered to me on Friday.

Mr. McMillan. I understand.

Senator Hatch. Is that fair?

Mr. McMillan. I understand. I understand you, yes, sir.

Senator Hatch. Can you meet that?

Mr. McMillan. I will meet it on Friday.

Senator Hatch. You will give me a date?

Mr. McMillan. I will give you a date.

Senator Hatch. Okay. Again, I am not mad at you.

Mr. McMillan. I understand.

Senator Hatch. I am mad at MSHA. I know you are brand new down there, and I think you have been very cooperative with this Committee. So I apologize if it seems like I am picking on you. But I am picking on MSHA. And I know your jobs are tough down there. I know this is a difficult industry. I know that you have lots of problems. You have lots of antagonism from everybody involved. But I want this straightened out. Friday is the date.

Mr. McMillan. Yes, sir.

Senator Hatch. And I do not want it mailed Friday; I want it in my hands Friday.

Mr. McMillan. I will meet with you or your staff on Friday.

Senator Hatch. Okay. We have that understanding, then.

Wouldn't you agree, Mr. McMillan, that lives could have been saved if, prior to the fire, MSHA had required that tailgates be kept open, that compressors be properly ventilated and that the overcasts be made of concrete and steel, which is what Utah Power & Light is now doing?

Mr. McMillan. If all three of those things had been done as described by you, Senator, there would have been no fire, there would have been no loss of life, there would have been no failed aluminum overcast.

Senator Hatch. Well, then, is MSHA going to require these things from here on in?

Mr. McMillan. Absolutely. We have moved forward in the area of air compressors. We have clarified for both the industry and our inspection force two key issues. One is that these types of compressors must be housed in fireproof enclosures, and second, that if they are going to operate unattended, that they have fire suppression equipment.

I think that responds to those concerns there.

We have responded to the issue of the aluminum overcast and its early failure in a couple of ways. Number one, I might point out that although I would not characterize the use of aluminum overcasts as widespread in the industry, they have been used on a limited basis for a number of years. And quite frankly, as best I can tell now, the potential hazards of aluminum overcast went undetected by labor, management and Government until the Wilberg fire.

Where aluminum overcasts have been put in place, we have instructed that they be coated with a protective material that will then give them an additional amount of fireproofing.

Senator Hatch. Now, let me go back to the prior exchange. I want your date by Friday, but I want a reasonable time for those regulations to be issued, too.

Mr. McMillan. I understand.

Senator Hatch. And if it is not reasonable, we are going to raise a lot of cain about it. I just want you to be aware of that. I think there has been a lapse of time that really is unjustifiable, in my opinion, and I think in the opinion of many people, and it just has to be resolved. So I am counting on you, Mr. McMillan, okay?

Mr. McMillan. I understand, Senator.

Senator Hatch. All right. Let me go a little bit further. I am going to submit several questions in writing, but I am also going to submit several questions to you about the task force report.

Other significant recommendations concerning ventilation, inspections, maintenance, and positioning of compressors were made by Mr. Herschel Potter in his September 20th, 1986 memorandum to Jerry L. Spicer, who was the Administrator of Coal Mining Safety and Health.

I want to know was any action taken on Mr. Potter's memorandum, and if not, why not?

[Responses to additional inquiries and questions submitted to Mr. McMillan by Senator Hatch follow:]

ORRIN G. HATCH, UTAH, CHAIRMAN
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United States Senate
COMMITTEE ON LABOR AND
HUMAN RESOURCES
WASHINGTON, DC 20510

June 12, 1987

Mr. Alan McMillan
Acting Assistant Secretary
Mine Safety and Health Administration
U.S. Department of Labor
4015 Wilson Blvd.
Arlington, VA 22203

Dear Mr. McMillan:

My review of the transcript of the Committee on Labor and Human Resources hearing on April 27, 1987, on the Wilberg Mine fire has revealed what appear to be several inconsistencies in the testimony of District Nine manager, John W. Barton. At least one of Mr. Barton's statements differs markedly from a previous statement he made in an interview with my staff prior to the hearing, while other statements he made would appear to be in conflict with MSHA regulations in effect on December 19, 1984, the time of the Wilberg Mine fire. My analysis of these statements is as follows:

1. In an interview with my staff prior to the hearing, Mr. Barton stated that he gave a written variance to Emery Mining Corporation permitting the continued operation of the fifth right longwall section despite blockage that precluded MSHA inspectors from walking the entirety of the sixth right tailgate entry to inspect air flow. He told my staff that while the variance itself was proper, he had erred by failing to grant the union a hearing on the variance request, as required by law.

In direct contradiction of this statement, Mr. Barton stated at the hearing that "we did not require a petition of modification" in this case (hearing transcript, page 109.) Mr. Barton further stated that he never granted "verbal" waivers (hearing transcript page 114) - a type of variance from safety standards that is not permitted under either the Federal Coal Mine Health and Safety Act or MSHA regulations. It is clear from reviewing the record that some sort of variance was granted, however. An October 25, 1984, letter to Mr. Barton from the Wilberg Mine manager, D. W. Bocook, which I inserted into the record at page 118, stated that "the reason for the variance request is as follows". Thus a request was made, and it must have been granted because the fifth right section continued in operation without the tailgate section being cleared. Please clarify this issue by responding to the following questions:

A) Was a variance granted in this case?

B) If so, was it written or verbal? If written, please provide documentation.

C) If no variance was needed, why did Mr. Barton inform the Committee staff that he had granted a variance and had erred only in failing to give the union a hearing on the variance application? If he changed his mind about his prospective testimony on this point, why did he fail to inform the Committee staff and thus have precluded the confusion that took place on this point at the hearing?

2. At page 109 of the transcript, Mr. Barton stated that Emery never even requested a variance from the air flow standard as it affected the sixth right tailgate entry. As I have mentioned, such a letter was addressed to Mr. Barton by Emery and was inserted in the hearing record at page 118 of the transcript. Please explain why Mr. Barton made this statement, given MSHA's own records.

3. With regard to the Wilberg Mine's emergency evacuation plan, Mr. Barton stated at page 112 of the hearing transcript that it would "not be unusual" for "Emery to be operating Wilberg with a 1974 evacuation plan filed by a previous mine operator," Peabody Coal Company. Mr. Barton's testimony would suggest there were no major changes in the mine's operation. Yet, the longwall mining method and the use of diesel equipment were both introduced between the filing of the plan in 1974 and the 1984 Wilberg mine fire. Would you comment on whether it would "not be unusual" to permit continued use of an old evacuation plan after introduction of longwall mining techniques and diesel equipment? Did Mr. Barton err in not requiring Emery to submit a revised evacuation plan with the advent of these major changes in mine operation?

The fact that Emery received a citation for violation of the Mine Health and Safety Act for failure to file such a plan would make it appear that Mr. Barton did err. This citation was issued on March 24, 1987, and should have been addressed by Mr. Barton in his April 27 testimony. Please explain how Mr. Barton could have testified as he did in view of this citation. Please also provide the basis for the citation, such as a written policy requiring "new" operators of coal mines to notify MSHA in writing if they plan to keep in effect the approved plans of previous operators.

4. Mr. Barton, at page 114 of the transcript, stated that at the time of the Wilberg tragedy, it had not been MSHA's practice to require fireproofing of the type of compressor that was located at number 36 crosscut at the time of the Wilberg mine fire. This compresssor was cited as the cause of the fire in MSHA's preliminary investigative report, issued March 24, 1984. In fact, MSHA cited the company with a violation of the Mine Health and Safety Act for failure to fireproof this particular compressor. This citation was also issued on March 24, more than one month prior to Mr. Barton's testimony. In view of the agency's citation, which should have been known to Mr. Barton, how could Mr. Barton conceivably testify that there was not a requirement that the compressor be housed in a fireproof structure?

In view of the verbal discussions that my staff has had with you and Mr. Harrison Combs regarding these points, I would appreciate receiving your written response to these questions by the close of business, Friday, July 3, 1987. I have also included a list of supplemental questions for you that arose because of time constraints at the April 2 hearing. I would hope to have written answers to these questions by the close of business June 30, 1987.

If any questions arise regarding these requests, please address them to Mr. Kevin McGuiness, Minority Chief Counsel at (202) 224-6770, or Mr. James G. Phillips, Minority Chief Investigator at 224-9285. Your cooperation in this matter is greatly appreciated.

Sincerely,

Orrin Hatch

Orrin G. Hatch

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Additional Questions for Mr. McMillan

1. Mr. McMillan, in your opening statement you referred many times to MSHA's frustration over disasters such as Wilberg, to causes of the fire, to contributory causes, to violations of mandatory regulations, etc. In view of what is now known about the fire on the air compressor, does MSHA recognize its contribution to the Wilberg Mine fire? Will this be addressed in the final report?

2. After a longwall has been placed in production, what is the differences between a longwall developed with a two-entry system and one developed with multiple entries?

3. What is the reasoning behind requiring a longwall developed with two entries to keep the tailgate entry open for travel and not requiring the tailgate entry be kept open on longwalls developed with multiple entries?

4. In your opening statement discussing the Task Force, did not the Task Force make seven triple A recommendations that applied to all longwall mining systems? Was not the first recommendation that the tailgate entry on all longwalls be kept open for travel? Why are your references made only to two entry longwall systems?

5. Has MSHA been legally challenged in the past for attempting to add requirements to ventilation plans and was MSHA successful in each one of the attempts? If not, why is MSHA continuing in this manner rather than following the rulemaking procedures?

6. So that we can determine the relativity of 1700 underground mines to eleven mines using a two-entry development system for longwall mining, please provide the following information:

a. The number of mines employing:
   1-19 miners
   20-49 miners
   50-99 miners
   100-149 miners
   more than 150 miners

b. The number of multiple entry longwall mines employing:

1-19 miners
20-49 miners
50-00 miners
100-149 miners

c. Location by state of the eleven two-entry mine

d. Location by state of multiple-entry longwall mines

7. Your statement that, "As of this date, April 27, 1987, we are at the lowest level in history to date of fatalities, in both all of mining as a general category and in coal mining specifically." You were referring to gross numbers. Please provide us with the fatal incident rate for the first four months of 1987 and compare this incident rate with the first four months of 1982, 1983, 1984, 1985 and 1986.

8: In your testimony in response to a question about venting the compressor into the return air and that MSHA had clarified this regulation, please provide us with a copy of the clarification and how this clarification was made known to mine operators.

ORRIN G. HATCH, UTAH, CHAIRMAN

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United States Senate
COMMITTEE ON LABOR AND
HUMAN RESOURCES
WASHINGTON, DC 20510

June 12, 1987

Mr. Charles A. Bowsher
Comptroller General
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

Based on testimony at a recent hearing on the Wilberg Mine fire and reports that I have received in connection with that hearing, I ask that the General Accounting Office conduct the necessary investigation to determine:

1. What was the nature of the variance given Emery Mining Corporation regarding the tailgate entry involved in the Wilberg Mine fire? Was it written or verbal? Were federal laws or regulations or MSHA internal policies violated by MSHA's failure to give the union a hearing on the proposal to continue mining without a passable tailgate section?

2. Did the management of District Nine err in failing to require Emery to provide an up-to-date emergency evacuation plan? Mr. Barton testified at the Committee hearing that it is not unusual to continue to use old plans as long as there were no major changes in the mine plan. Were the changes in the mining plan since 1974, i.e., the introduction of diesel equipment, sufficient reasons to require the filing of a new evacuation plan subsequent to 1974?

3. Did the District Nine management err in failing to require that the compressor station in the Fifth Right section be fireproofed and contain fire suppression devices?

4. In your agency's opinion, was MSHA District Nine doing everything within its power to ensure the safe operation of the Wilberg mine on December 19, 1984?

In addition to interviewing the appropriate MSHA personnel, I request that you obtain the views of former MSHA safety investigator Herschel Potter, who headed up the MSHA investigation of the Wilberg fire, and UMWA District 22 President Mike Dalpiaz.

If you have any questions concerning this request, please contact Mr. Jim Phillips at (202) 224-9285.

Sincerely,

Orrin Hatch

Orrin G. Hatch
Ranking Minority Leader

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U.S. Department of Labor

JUN 2 9 1987

The Honorable Orrin G. Hatch
Ranking Minority Member
Committee on Labor
  and Human Resources
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

This is in response to your letter of June 12 concerning the hearing conducted by the Committee on Labor and Human Resources regarding the Wilberg Mine fire. You asked that we clarify certain statements made by Mr. John Barton, our District 9 Manager, and respond to certain supplemental questions.

At the outset, I believe it is important to say that we regret any confusion that we may have caused during our presentation or in any other meetings or interviews. It is our policy to be totally frank and forthcoming with the facts as we know them. To this extent, we in the Mine Safety and Health Administration (MSHA) accept some of the responsibility for any resulting confusion or misconception which indicates that we may not have taken the opportunity to fully outline the facts in the clearest manner possible.

With regard to Mr. Barton's testimony, we believe it is particularly important to fully discuss the events involving the blocked entry on the 5th Right tailgate. A second letter from Emery Mining Company concerning the blockage helps to explain Mr. Barton's testimony and remarks.

The standard involved, Subpart D of Part 75, Title 30 of the Code of Federal Regulations (CFR), relates to how mines are ventilated. Section 75.305 of that Subpart states that examinations of return aircourses in their entirety shall be made weekly to ensure that the quality and quantity of air is sufficient to ensure proper ventilation.

On October 22, 1984, officials of Emery Mining Company notified MSHA's Orangeville office that a partial blockage had occurred in the 5th Right tailgate entry. Based on the notification, two federal inspectors visited the mine to examine the area. They found that the area involved was impassable.

On October 25, an Emery Mine official wrote to Mr. Barton requesting a "variance" from the requirement that the entry be traveled. No written response was made to that letter. Rather, on November 8, the ventilation supervisor from the MSHA District 9 office in Denver went to the Orangeville office to meet with the MSHA inspection supervisor and company officials to discuss the matter. At that time, the MSHA supervisors determined that examining the area from both sides constituted compliance with the regulation since the quantity and quality of air could be determined. That same day, an Emery official again wrote to Mr. Barton outlining the substance of the meeting. In that letter no request was made for a variance. On November 23, the Agency responded to the mine operator stating that they were in compliance with the examination requirement in 30 CFR 75.305 and that only if conditions further deteriorated, would a petition for modification be required. Copies of these letters are enclosed for your information.

In a letter to the United Mine Workers of America on March 18, 1985, MSHA's Administrator for Coal Mine Safety and Health (CMS&H) stated that the interpretation that the mine was in compliance with the standard was incorrect. Mr. Barton acknowledged the error during the hearing which is reflected on page 117 of his testimony.

It is Mr. Barton's recollection that during the interview with your staff, he indicated that his interpretation of this standard was in error and that a petition for modification should have been filed by the mine operator. It was Mr. Barton's belief that the Administrator would have granted the petition if it were filed. Therefore, in his opinion, the result would have been the same. He did acknowledge, however, that District 9's action did preclude the miners' representative from a hearing on the matter.

With regard to the Wilberg Mine emergency evacuation plan, the Agency did not have an established policy in 1974 relating to the status of approved plans after a change in mine ownership. The District 9 policy at that time was that approved plans were part of the mine operation and remained in effect until actually changed by the operator. Under that policy, changes in ownership at an operation did not affect the existing plans and mine operators were not required to explicitly adopt previously approved plans. In 1979, the Agency did issue a national policy directive on the matter, which did require new mine operators to adopt or resubmit plans of the previous operator. A copy of that policy directive is enclosed for your convenience.

Concerning the adequacy of the plan itself, as indicated in my testimony on page 130 and as Mr. Barton stated in his testimony on page 129, the inspectors should have been reviewing the plan each time they inspected the mine and, if they determined that the plan was inadequate, they should have required the mine operator to update the plan and send it to Mr. Barton for his review and approval. This was not done and as I stated, the inspector's review was pro forma and not of substance, or the review was not fully made.

To ensure that all plans are accurate and up to date, new review procedures have been implemented in District 9 which require managers to periodically review mine files personally. In addition, all mine operators in District 9 have been notified that they should review their plans to ensure that they are adequate for current mining conditions and practices.

The citation that was issued to Emery for failure to file a plan was based on the fact that Emery had changed its 1974 plan and implemented another plan without submitting it to MSHA for approval. This violation was the basis for the citation.

Regarding the compressor, at the time of the Wilberg Mine fire, some MSHA enforcement personnel did not interpret 30 CFR 75.1105 as requiring areas where compressors, (such as the one involved in the fire) were located to be fireproof compressor stations. The compressor in question was considered mobile, as pointed out in Mr. Barton's testimony on page 114 and therefore the area in which it was located was not considered to be a station. The Wilberg accident investigating team, however, determined that, although the compressor was mobile, the location where the compressor was placed was routinely used for that purpose and was equipped with fixed air lines. Therefore, the location was a station and the operator was in violation of the standard. On April 7, 1987, MSHA issued a Program Information Bulletin clarifying what constitutes a compressor station. During the hearing, Mr. Barton was describing the rationale behind the erroneous interpretation.

I hope that the discussion provided fully explains Mr. Barton's actions and testimony. The responses to the supplemental questions you submitted are enclosed.

If you would like any additional information, do not hesitate to contact me.

Sincerely,

Alan C. McMillan

Alan C. McMillan
Deputy Assistant Secretary for
Mine Safety and Health

Enclosures

Nov 5

11/16
File Miscellaneous Co.

New plan on way after
meeting in Orangeville.

EMERY MINING CORPORATION
A SAVAGE BROTHERS COMPANY

Kneff

RECEIVED
OCT 23 1984
DISTRICT 9

WaH

October 25, 1984

Mr. John W. Barton
District Manager
Mine Safety and Health Administration
P O Box 25367
Denver, Colorado 80225

Subject: Wilberg Mine ID # 40-00080 5th Right Longwall Return

Dear Mr. Barton,

At this time, aserious squeezing problem has developed in the tailgate entry (6th Right) of the 5th Right Longwall which is just completing installation. The 6th Right entry was originally cribbed with a double row on 10 foot maximum centers and five foot walkway between rows. Since the retreat of the 6th Right panel, there has been very severe damage done to the entry. As shown on the attached map, there is floor heaving and squeezing throughout most of the entry length and the top was broken quite badly from crosscut 11 to 13+30. However, the worst hit area is from 13+30 to 15 where the roof on the solid side has sheared and the floor has heaved squeezing the entry to a very dangerous crawl space of approximately 3 - 4 feet high. At crosscut 14+20 a cave has completely closed the entry for approximately 20 feet. The remainder of the entry on either side of the area described above is accessible at present.

Following a visit by Mr. Jack Matekovic on October 22, crews began installing a second double row of crib in between the existing rows from crosscut 13+30 outby to crosscut 8 to stabilize the area and attempt re-opening the area from 13+30 to 15 so that the entire entry could be examined. After beginning the rehabilitation at this area and examining the conditions it was concluded to be too hazardous to those trying to rehabilitate the area. At this time, a variance is requested which would not require an inspection of the entire return entry.

The reasoning for the variance request is as follows:

A- The return is not a designated escapeway - the belt and the intake are the escapeways for the section.
B- The mine has no record of any methane.
C- The primary ventilating course is through the bleeders and out 8th Right or over the gob of 6th Right and 7th Right. This bleeder was inspected by Mr. Matekovic and found to be in good condition and is more than capable of handling the quantity of air to run the longwall.
D- To require an inspection of the entire return entry even if rehabilitated through the closed off area would be a serious hazard to any involved.

P O Box 310 • Huntington, Utah 84528 • (801) 687-9821

E- Airflow can be maintained throughout the entire entry.

The work mentioned earlier on the additional support from 8 to 13+30 will be completed by October 29 and some scaling work from crosscut 18 to 19 will be completed by November 2. If there are any questions concerning this proposal, please feel free to contact my office. Your prompt attention to this matter would be appreciated.

Sincerely,

D.W. Bocook
D.W. Bocook
Mine Manager

DWB/glh
Encl. (2)

EMERY MINING CORPORATION
A SAVAGE BROTHERS COMPANY

JJE Knepp

November 8, 1984

RECEIVED
NOV 13 19
DISTRICT
MS
DEN

Mr. John W. Barton
District Manager
Mine Safety and Health Administration
PO Box 25367
Denver, Colorado 80225

SUBJECT: Wilberg Mine ID #40-00080
Evaluation of 5th Right Longwall Return

Dear Mr. Barton,

A meeting was held on November 8 with Bill Knepp and Jack Matekovic concerning the squeezing problem encountered in the 5th Right Longwall tailgate entry (6th Right). At that time, it was stated that the 6th Right entry was initially supported with a double row of cribs on 10 foot maximum centers and a five foot walkway between rows. However, since the extraction of the 6th Right Longwall, squeezing damage has occurred to the entry and made it impassable from crosscut 13+30 to 15 (170 feet) as shown on the map. An additional double row of cribs was installed from crosscut 8 to 13+30 to stabilize the front end of the tailgate entry since the damage.

At present, the entry can be travelled completely from either side of the impassable area described and is capable of maintaining airflow throughout the entire entry. It is not a designated escapeway and no methane has been detected in the area. The primary ventilating course is through the bleeder entry and out 8th Right or over the gob of 6th and 7th Right. The bleeder course is in good condition and capable of handling the quantity of air needed to operate the longwall.

With the previous conditions in mind, Emery Mining is willing to travel the 6th Right entry weekly to either side of the impassable area (crosscut 13+30 to 15) for the duration of the 5th Right Longwall panel and by doing so feels that the entire entry can be properly evaluated.

If there are any questions concerning this evaluation, please contact my office.

Sincerely,

D.W. Bocook
D.W. Bocook
Mine Manager

DWB/glh

Encl. (1)

P.O. Box 310 • Huntington, Utah 84528 • (801) 687-9821

Coal Mine Safety and Health
District 9

[illegible]	11-23-84
[illegible]	11/23

November 23, 1984

Mr. D. W. Bocook
Mine Manager
Emery Mining Corporation
P.O. Box 310
Huntington, Utah 84528

Re: Wilberg Mine
ID No. 42-00080
5th Right Longwall Return

Dear Mr. Bocook:

Your proposal received November 16, 1984, for the evaluation of the 5th Right longwall return appears acceptable to meet the requirements of 30 CFR 75.305. However, if conditions deteriorate further, a petition for modification of this safety standard may be required, or the longwall panel may have to be abandoned if sufficient air flow cannot be maintained across the longwall face.

Sincerely,

/S/ Michael C. Stanton

for John W. Barton
District Manager

Enclosure

cc: Price Subd Office
Orangeville FO (2)

WPKnepp:sl

RT5LGWLW

U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
4015 Wilson Boulevard
Arlington, Virginia 22203

JAN 23 1979

MEMORANDUM FOR: DISTRICT MANAGERS, Coal Mine Health and Safety
HERSCHEL H. POTTER
JOSEPH A. LAMONICA

FROM: JOSEPH O. COOK
Administrator
for Coal Mine Safety and Health

SUBJECT: Approved Mine Plans - Change of Mine Ownership

We have not had an established policy related to the status of approved mine plans at a mine after a change in mine ownership. In some instances, we have required that when the mine ownership changes the plans have to be resubmitted for approval; in other instances, we have assumed that the new ownership automatically accepted the existing approved mine plans as their plans.

In the future when there is a change in mine ownership, the new ownership shall be required to:

1. Resubmit the mine plans for approval under the new ownership or

2. Submit a letter to the district manager stating that the new ownership has adopted the existing approved mine plans.

Option No. 2 will be acceptable to MSHA until the mine plans are revised, at which time, the revised plans will reflect the new ownership.

Question 1:

Mr. McMillan, in your opening statement you referred many times to MSHA's frustration over disasters such as Wilberg, to causes of the fire, to contributory causes, to violations of mandatory regulations, etc. In view of what is now known about the fire on the air compressor, does MSHA recognize its contribution to the Wilberg fire? Will this be addressed in the final report?

Answer:

It is my view that MSHA and the mining community as a whole did not measure up to their shared responsibilities to protect mine safety and health. In this regard, MSHA's final report will address all violations and the steps we at MSHA have taken and are taking to improve health and safety in the mines. Some of these steps have already been implemented and are discussed below.

As you are aware, the feasibility to safely operate longwall systems using two entries was evaluated by a special task force. Recommendations of the Task Force included procedures that would enhance the safety of miners in mines where two-entry and multiple-entry longwall systems are used.

Beginning in October 1985, MSHA inspectors conducted an evaluation of the training of coal miners in the use of self-contained self-rescuers (SCSRs).

As a result of this evaluation, some operators were required to retrain their workers in donning and using SCSRs.

In early 1987, MSHA clarified the District Manager's authority to modify or define operator compliance responsibilities. MSHA released a program information bulletin in early April 1987 to all underground coal mine operators and appropriate enforcement personnel on the hazards associated with air compressor equipment used in underground coal mines (see Question 8 and the enclosure). The following month, District Managers were directed that aluminum ventilation controls should be removed or protected from early fire failure.

In June of this year, MSHA reissued it's policy memorandum (copy enclosed) on guidelines for the storage of SCSRs to specifically address storage of the units on longwall mining sections. During June, the Agency also provided a Bureau of Mines training program for the donning and use of SCSRs to all underground coal mine operators through District offices. Perhaps most importantly, we have taken an unprecedented step of issuing an emergency temporary standard (ETS) which prohibits any person who has not received hands-on SCSR training from going underground. The ETS will be published in the Federal Register on June 30. It will serve as the proposal for a final rule which will be developed within nine months.

MSHA will continue to make changes in our policies and procedures as we identify other areas where we can take steps to prevent a recurrence of an accident similar to the Wilberg Mine fire.

Question 2:

After a longwall has been placed in production, what are the differences between a longwall developed with a two-entry system and one developed with multiple entries?

Answer:

After the entries have been developed and the headgate entries have been connected to the tailgate entries, the primary difference between the two-entry and multiple-entry systems is the number of entries available for ventilation purposes and for the transportation of miners, coal, and materials. In both systems, one or more entries are used for ventilation of the section and one entry is used for the conveyor belt line.

In a two-entry system, the intake air is normally in only one entry and this entry is used to transport miners and materials. The belt entry is used to transport coal and the air is directed away from the face. In special circumstances, both the entries in the two-entry system may be intake entries.

In a multiple-entry system, the intake air is coursed through either one or two entries, but unless the entries are separated from each other by a line of stoppings (blockwalls), the ventilation in the intake entries is essentially the same as in a two-entry system. In the multiple-entry system, the belt entry is also used to transport coal. Unlike a two-entry system, if a return entry is available on the headgate side, the operator can direct air up the belt haulage entry towards the longwall face and ventilate the belt air directly into the return aircourse.

In both the two-entry system and the multiple-entry system, the air which ventilates the longwall face usually exhausts through the tailgate return entry. Also, in both systems, the two required escapeways are typically through the development entries on the headgate side of the longwall face.

Question 3:

What is the reasoning behind requiring a longwall developed with two entries to keep the tailgate entry open for travel and not requiring the tailgate entry be kept open on longwalls developed with multiple entries?

Answer:

Section 75.305, 30 CFR, requires, in part, that the mine operator make certain examinations weekly in "at least one entry of each intake and return aircourse in its entirety" (emphasis added). It is MSHA's position that such examinations can be made only if the entries are open and safe for travel. The tailgate entries on longwall mining systems, both two entry and multiple entry, are, in most cases, return aircourses. In rare instances, tailgate entries are intake aircourses. Irrespective of whether a tailgate entry is an intake or a return aircourse, however, it must be kept open so the aircourse may be traveled in its entirety during the weekly examination. In those cases where the intake or return aircourses cannot be maintained so they can be examined in their entirety weekly operators may file a petition for modification proposing an alternative method of examining the aircourses.

There is considerable merit to the position that a two-entry mining system with limited entries available for escape in a mine emergency should be required to keep the tailgate entry open for travel even though both required escapeways are on the headgate side. The rationale for providing an additional avenue for escape off longwalls has application as well to multiple-entry longwalls. Indeed this was the recommendation of MSHA's Task Force. Therefore, MSHA places special emphasis on the requirement that tailgate entries be maintained so they can be safely traveled in approval of all petitions for modification for both two-entry and multiple-entry systems. Likewise, the Agency requires additional roof support in approved roof control plans for mines which have experienced difficulty in keeping tailgate entries open for travel. MSHA also considers restricted travel off the tailgate side of the longwall when mine operators petition to modify the examination requirement in 30 CFR 75.305 because of a roof fall in return. In such cases we require that special precautions be taken to improve safety.

Question 4:

In your opening statement discussing the Task Force, did not the Task Force make seven triple A recommendations that applied to all longwall mining systems? Was not the first recommendation that the tailgate entry on all longwalls be kept open for travel? Why are your references made only to two entry longwall systems?

Answer:

Yes, the first seven recommendations by the Task Force addressed all longwall systems regardless of the number of entries utilized and the Task Force did recommend that the tailgate entry be kept open for all longwall systems. Our reference to the two-entry system was made because we were discussing the Wilberg Mine which utilized a two-entry longwall system. Furthermore, as discussed in our response to Question 3, the aircourse in the tailgate entry is required by 30 CFR 75.305 to be kept open and safe for conducting the weekly examination regardless of whether the entries are part of a two-entry or a multiple-entry longwall system.

Question 5:

Has MSHA been legally challenged in the past for attempting to add requirements to ventilation plans and was MSHA successful in each one of the attempts? If not, why is MSHA continuing in this manner rather than following the rulemaking procedures?

Answer:

Section 303(o) of the Mine Act, 30 U.S.C. 863(o), requires that each coal mine operator adopt a ventilation plan "suitable to the conditions and the mining system" of its mine. Once this ventilation plan is approved by the Secretary, its provisions are enforceable as mandatory standards. When MSHA believes that the "conditions and mining system" of a mine require additional safeguards in the mine's ventilation plan, we have required the operator to include those safeguards. The decision to require inclusion of specific plan provisions is based on the need to devise an operating system suited to the particular circumstances of each mine. In a few areas, MSHA has standardized plan provisions applicable to all mines or mines with common features. Each of those areas is being considered for inclusion in MSHA's mandatory standards which are now in active rulemaking. In a relatively few instances, operators have challenged MSHA's insistence that a plan provision be adopted. However, because of the individualized nature of mine plans, even when an operator prevails in a plan dispute, that decision only affects one mine. For this reason, general rulemaking is not always an appropriate response to a plan conflict.

Question 6:

So that we can determine the relativity of 1700 underground mines to eleven mines using a two-entry development system for longwall mining, please provide the following information:

a. The number of mines employing:

1-19 miners

20-49 miners

50-99 miners

100-149 miners

more than 150 miners

b. The number of multiple-entry longwall mines employing:

1-19 miners

20-49 miners

50-99 miners

100-149 miners

c. Location by state of the eleven two-entry mines.

d. Location by state of multiple-entry longwall mines.

Answer:

On June 17, 1987, there were 1,726 active underground mines (i.e. mines at which miners were working). The number of mines by mine employment are broken down as follows:

Number of Miners	Number of Mines
1- 19 Miners	1,094
20- 49 Miners	346
50- 99 Miners	88
100-149 Miners	44
More than 149 Miners	154
Total Active Underground Mines	1,726

On June 17, 1986, there were 95 active mines with at least one longwall section. The number of these mines by mine employment and number of entries are broken down as follows:

Number of Miners	Two-Entry Longwall Mines	Multiple-Entry Longwall Mines	Total Longwall Mines
1- 19 Miners	1	11	12
20- 49 Miners	1	2	3
50- 99 Miners	2	7	9
100-149 Miners	3	3	6
More than 149 Miners	2	63	65
Total	9	86	95

Please note that two of the two-entry longwall mines cited in Question 6 were not active longwall mines as of June 17. Further, 14 of the longwall mines were in nonproducing status on June 17. Also, the number of miners at two of the mines was undetermined on that date, these two mines were included in the 1-19 category.

Number of Longwall Mines by State

(As of June 17, 1987)

State	Two-Entry Longwall Mines	Multiple-Entry Longwall Mines	Total Longwall Mines
AL		5	5
CO		6	6
IL		4	4
KY		7	7
MD		1	1
NM	1	1	2
OH		5	5
PA		14	14
UT	7	2	9
VA		12	12
WV		29	29
WY	1	0	1
	9	86	95

Question 7:

Your statement that, "As of this date, April 27, 1987, we are at the lowest level in history to date of fatalities, in both all of mining as a general category and in coal mining specifically." You were referring to gross numbers. Please provide us with the fatal incident rate for the first four months of 1987 and compare this incident rate with the first four months of 1982, 1983, 1984, 1985, and 1986.

Answer:

The fatal incident rates for the first quarter of 1987 as compared to first quarter of 1982 through 1986 follow:

Fatal Incident Rate
(First Quarter Only)

Year	All Coal	All Metal/Nonmetal	All Industry
1982	.07	.05	.06
1983	.02	.03	.03
1984	.07	.05	.06
1985	.04	.03	.04
1986	.07	.04	.05
1987	.02	.05	.04

MSHA calculates incident rates quarterly from data submitted by operators on the Quarterly Employment and Coal Production Report as required by 30 CFR 50.30. Since this information is collected on a quarterly basis only, the data requested for the first four months of 1982 through 1987 is not available.

Question 8:

In your testimony in response to a question about venting the compressor into the return air and that MSHA had clarified this regulation, please provide us with a copy of the clarification and how this clarification was made known to mine operators.

Answer:

On April 7, 1987, MSHA released MSHA Program Information Bulletin No. 87-1C, Subject: Air Compressors in Underground Coal Mines. This bulletin was sent to all underground coal mine operators as well as appropriate MSHA officials. A copy of the bulletin is enclosed.

U.S. Department of Labor

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, VA 22203–1984

June 1, 1987

MSHA POLICY MEMORANDUM NO. 87-2C

SUBJECT: Guidelines for Permitting Storage of Self-Contained Self-Rescuers (30 CFR 75.1714-2(e))

By this policy memorandum, guidelines contained in CMS&H Memo No. HQ-83-12-S (5003), dated November 17, 1982, are reissued and revised to include, in factor (v), a provision that addresses the storage of self-contained self-rescue devices on longwall mining sections to ensure that self-contained self-rescuers are available for use should an emergency occur that prevents escape off one of the two sides of the longwall face.

The District Manager is required in 30 CFR 75.1714-2(e)(1) to consider 11 factors in deciding whether to permit an operator to place a self-contained self-rescue device more than 25 feet from a miner. In order to assist you when considering these factors, the following guidelines are provided to help determine (1) whether to permit or prohibit storage, (2) storage distances, and (3) storage methods and procedures.

(i) Distance from affected sections to surface.

If the deepest penetration of a working section is not farther from the surface than the travel distance listed in (iii), the District Manager may approve a plan for the operator to provide miners only with filter-type self-rescuers. However, when the deepest penetration of a working section is greater than the travel distance listed in (iii), operators shall be required to provide self-contained self-rescuers.

(ii) Pitch of seam in affected sections.

In pitching seams, such as encountered in anthracite mines, self-contained self-rescuers should be stored on level travelways.

INQUIRIES:	Earnest Teaster, Office of Standards, Regulations and Variances, (FTS) 235-1910 or (703) 235-1910
DISTRIBUTION:	District Managers, Coal Mine Safety and Health Principal Officials, Headquarters and Beckley Academy
SUPERSEDES:	CMS&H Memo No. HQ-83-12-S, dated November 17, 1982
SUBJECT:	Guidelines for Permitting Storage of Self-Contained Self-Rescuers (30 CFR 75.1714-2(e))

(iii) Height of coal seam in affected sections.

The height of the travelway affects the speed of travel and consequently the distance that miners may be away from stored self-contained self-rescuers.

Miners generally should not be farther from self-contained self-rescuers than a distance that they can travel at a normal pace in 5 minutes. However, the time and distance can be increased or decreased after considering all factors. Miners should never be farther from self-contained self-rescuers than a distance they can travel at a normal pace in 10 minutes. The attached chart should be used to convert time to travel distance.

(iv) Location of escapeways.

Where designated escapeways are not readily available, such as during travel in remote locations of bleeders and return airways, storage of self-contained self-rescuers should be limited to not more than 5 minutes travel time.

(v) Proposed location of self-contained self-rescuers.

The preferred locations for storage of self-contained self-rescuers are in the intake escapeways and accessible from more than one entry.

In longwall mining sections, self-contained self-rescuer units should be stored near the face on headgate and tailgate side of the longwall unit. Enough self-contained self-rescuer units for all miners covered by the storage plan should be stored at both locations.

The environment in the storage location should be in accordance with manufacturers' recommendations.

Storage plans should include provisions for segregating visitors' self-contained self-rescuers from those provided for employees at the mine.

Each miner must be trained to know the specific location of the self-contained self-rescuer that is available for him/her.

(vi) Type of work performed by affected miners.

Different plans may be approved for various categories of miners, dependent primarily upon the amount of travel re-required to perform their work. Storage plans for section workers should rarely allow for travel times greater than 5 minutes. Storage plans for rovers may allow for travel time up to 10 minutes.

(vii) Degree of risk to which affected miners are exposed.

The amount of methane liberation and size and type of power systems, i.e., battery, electrical (a.c. or d.c.) or diesel, are some of the factors that should be considered when evaluating the degree of risk. Another factor should be the history of violations that could lead to the cause and effect of fires, explosions, and inundations.

(viii) Potential for breaking into oxygen deficient atmospheres.

When mining near abandoned areas as described in 30 CFR 75.1701, or into areas having a high potential for outbursts, storage of self-contained self-rescuers shall not be permitted.

(ix) Type of risks to which affected miners are exposed.

The types of risks that should be considered when evaluating storage plans are the risks associated with explosions, fires, and inundations.

(x) Accident history of mine.

The types of accidents which should be considered are those relating to explosions, fires, inundation of gases, and outbursts.

(xi) Other matters bearing upon the safety of miners.

Storage plans should include a requirement for examination of self-contained self-rescuers during the period of the preshift examination or at the beginning of the shift. If the self-contained self-rescuers are stored in substantially constructed containers, or in another permanent manner, and located so that the units are protected from damage, inspection of the self-contained self-rescuers once each 24 hours should be sufficient to assure reliability of the units.

Plans should include a provision that would permit any miner to wear or carry a self-contained self-rescuer.

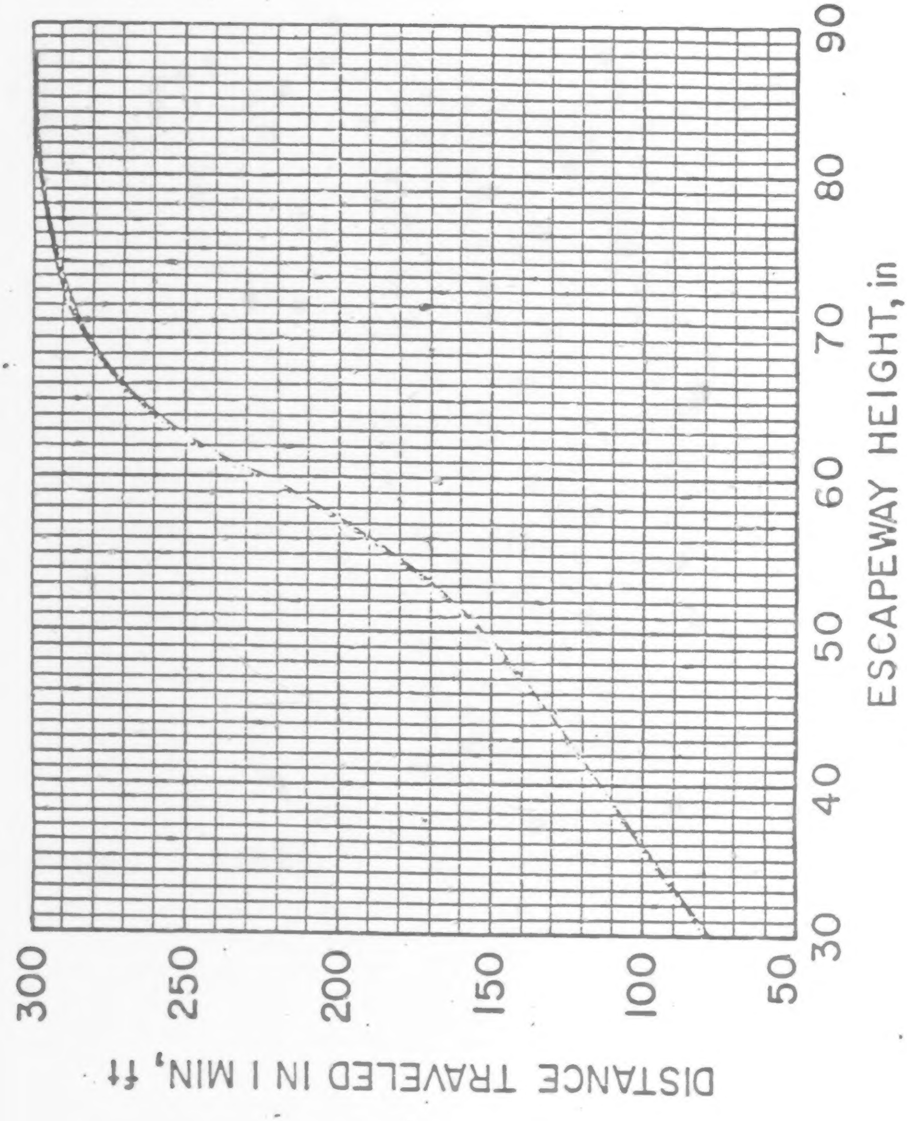
The tests required under the provisions of 30 CFR 75.1714-3(d) shall be made in accordance with the manufacturer's approved instructions.

The minimum number of self-contained self-rescuers underground at each mine must be equal to or greater than the number of miners underground.

Also, in 1982 you received a copy of "Guidelines for Oxygen Self-Rescuer," Volumes I and II. This report was distributed by the Bureau of Mines and is used by many operators as a basis for developing storage plans. Many recommendations made in the report are includ bove and the others may be helpful to the operator in preparing a storag an and to you in approving plans. However, the guidance provided in this licy memorandum for the 11 factors should be the primary source of guidan when giving permission for storage of self-contained self-rescuers.

Jerry L. Spicer
Administrator
for Coal Mine Safety and Health

Attachment


DISTANCE TRAVELED IN 1 MIN, ft
300
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ESCAPEWAY HEIGHT, in

U.S. Department of Labor

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, VA 22203-1984

April 7, 1987

MSHA PROGRAM INFORMATION BULLETIN NO.87-1C

SUBJECT: Air Compressors in Underground Coal Mines

This MSHA Program Information Bulletin identifies the hazards associated with air compressor equipment, emphasizes the maintenance of air compressors, and clarifies the application of certain underground coal mine safety standards to this equipment.

Maintenance of Air Compressors in Safe Operating Condition

Air compressor maintenance is an important component in the prevention of accidents involving this equipment, and especially in avoiding the potential for fire. Most major manufacturers of compressors have recommended maintenance programs for their equipment which are available to mine operators. Operators are encouraged to obtain and follow carefully the manufacturers' recommendations for maintaining the air compressors used in their mines.

Proper functioning of temperature-sensitive switches or other devices which shut down air compressor motors when overheating occurs is also essential to the safe operation of this equipment. Temperature-sensitive switches are a common safety feature on all but very small air compressors.

With respect to maintaining such safety features on equipment used in underground coal mines, MSHA standards specify at 30 CFR 75.1725 that:

> Mobile and stationary machinery and equipment shall be maintained in safe operating condition and machinery and equipment in unsafe condition shall be removed from service immediately.

Also, 30 CFR 75.512 provides that:

> All electric equipment shall be frequently examined, tested, and properly maintained by a qualified person to assure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected.

Air compressors present a potential for fire and are in unsafe condition when operated with temperature-sensitive switches or similar overtemperature devices not functioning properly. Accordingly, examinations and testing

INQUIRIES: George M. Fesak, Acting Chief, Division of Safety, 703/235-1284

DISTRIBUTION: All Underground Coal Mine Operators
District Managers, Coal Mine Safety and Health
Principal Officials, Headquarters
Superintendent, National Academy

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performed on air compressors must include attention to overtemperature devices, and whenever these safety features are not functioning properly the equipment must be immediately removed from service.

Fire Protection

Even with proper maintenance, air compressors, like other equipment used underground, can become involved in a fire. Two MSHA standards address this hazard. Section 75.1107 specifies in part that:

> . . . fire suppression devices meeting the specifications of the Secretary shall be installed on unattended underground equipment . . .

Air compressors are ordinarily lubricated and cooled by oil or other combustible liquid. Consequently, they do not qualify for the exception provided under 30 CFR 75.1107-1(a)(3), which refers to noncombustible electrically powered equipment containing no flammable fluid. Thus, air compressors, when operated unattended, are required to be equipped with MSHA-approved fire suppression devices conforming with the applicable requirements of 30 CFR 75.1107-3 through 75.1107-16 within 24 production shift hours after being installed.

Section 75.1105 also requires that:

> Underground transformer stations, substations, compressor stations, shops, and permanent pumps shall be housed in fireproof structures or areas. Air currents used to ventilate structures or areas enclosing electrical installations shall be coursed directly to the return.

The term "compressor station" is not defined. However, in normal usage it refers to an installation like any of the following:

- An air compressor that is connected to fixed air lines;
- An air compressor that is used to furnish air to two or more areas in the mine; or
- A location where air compressors are routinely placed for use.

Section 75.1105 does not apply to air compressors which are component parts of equipment such as locomotives, rock-dusting machines, or other similar equipment.

J L Spicer

Jerry L. Spicer
Administrator
for Coal Mine Safety and Health

Mr. McMILLAN. Yes, sir, action has been taken. Of the 10 items, 7 of them have already been addressed, as I indicated a little earlier, either through memoranda to the industry as well as our own people, or an informational bulletin that has been sent out to all operators.

Three of his recommendations are going to involve more rulemaking. For example, he recommends removing all compressors from the mines and only allowing them on the surface. We are looking into that. We have a group that will make some further definitive recommendations as to whether rulemaking in that area is needed. We will be moving on those recommendations once they are submitted to the Administrator of Coal.

Senator HATCH. Okay. I have been pleased to learn that in the period since the Wilberg fire, the operators of the mine have required significant hands-on training with self-rescue devices. Are you requiring that type of training industry-wide, and if not, why not?

Mr. McMILLAN. Yes, we are. We are requiring——

Senator HATCH. In every case?

Mr. McMILLAN. To the best of our knowledge, we are requiring enhanced training in every inspection that we make of any underground mine. We are recommending that there not be a substitute for hands-on training, but we have not made it an absolute uniform requirement as of yet. We are looking at it, and we say that is the very best method, and if an operator is not going to use hands-on, they must demonstrate to our inspection force that they have an alternate means of training that is at least as effective as actual "hands on" training.

Senator HATCH. Well, I think this is absolutely necessary if we are going to avoid an incident similar to the Wilberg tragedy.

Mr. McMILLAN. I agree.

Senator HATCH. But now, that goes a little bit further. Isn't this the sort of a standard that should be promulgated under Section 101(b)(1) of the 1977 Federal Mine Safety and Health Act, which permits the Secretary of Labor to promulgate an emergency safety standard without having to exhaust the rulemaking process? Isn't the answer to that yes?

Mr. McMILLAN. We have not determined that an emergency standard is yet necessary. We did do a survey that showed that of 11——

Senator HATCH. I do not mean to interrupt you, but you just got through saying that you are requiring that on all the pertinent places, and if you require it, why isn't it important to publish and promulgate a standard?

Mr. McMILLAN. I may have perhaps misunderstood your question. We are requiring enhanced training. We have not in every case made it a formal violation if that training is not "hands-on". That is the one point that I——

Senator HATCH. I see, but you are requiring—how about issuing the standard, then? How about regulations?

Mr. McMILLAN. We will issue either a standard or a regulation, whichever is appropriate.

Senator HATCH. How soon? You have got until Friday again.

Mr. McMillan. Senator, I would like you to give me until Friday and I will give you a date then.

Senator Hatch. Okay. On Friday, I want a date, and I want it a reasonable date.

It seems to me that the miners deserve this kind of protection. The companies need this type of instruction. If they have got to meet safety standards, by gosh, they ought to know what they are. You people are the experts in the world in this area. If you do not set them, who is going to?

I do not want to have unreasonable standards; I do not want to do things that will make coal mining uneconomical in America. But I want it to be safe, and I want the standards to be safe, and that is your job, and I want it done by Friday. In other words, you give me the date, but it had better be a reasonable time.

Mr. McMillan. I will do so.

Senator Hatch. You have admitted this is something that has to be done.

Mr. McMillan. It absolutely is.

Senator Hatch. All right, and that is good.

I have a few questions about the procedure that was used here in instituting a special investigation which, as I understand that term, that means an alleged violation or violations of the Mine Health and Safety Act which carry potential criminal penalties.

On September 29, 1986, Mr. Herschel Potter wrote a memorandum to Mr. Jerry Spicer, recommending that we have a special investigation regarding actions of certain agents of the Emery Mining Corporation which may have contributed to the cause of the Wilberg fire.

Are you familiar with that memorandum, Mr. McMillan?

Mr. McMillan. Yes, I am.

Senator Hatch. Now, before I begin, Senator Simon had a comment to make.

Senator Simon. And my apologies. I am tied up in some other activities immediately.

I share the concern of a lot of my colleagues about where we are going in the area of mine safety, and there is just no question there is a relationship between fatalities and injuries and how vigorous that enforcement is. In connection with the Wilberg situation, let me ask this. Does the basic law require mine operators to mine with more than two entries?

Mr. Clair. Senator, the law requires that the belt entry be separated from the intake and return entries. If a mine operator mines with a belt haulage system, he must mine with more than two entries.

If he mines with other than a belt or trolley system, he may mine with only two entries under the law.

Senator Simon. And was that complied with in the Wilberg case?

Mr. Clair. In the Wilberg case, there was an interpretation of the legal requirement for mines open prior to 1970 that permitted the Wilberg Mine to operate with only two entries. I think after the fire, we reexamined that section and feel that a better interpretation is that the so-called grandfather provision actually is based on need for the use of belt air to ventilate a face and that in these mines, that need is not established so that this grandfather provision has expired with these mines.

Senator SIMON. So that if I follow your answer, sir, you are saying in retrospect, a mistake was made.

Mr. CLAIR. I think the better view is that——

Senator SIMON. Yes. How many other mines do we have out there where a similar condition exists where we have potentially another Wilberg disaster?

Mr. MCMILLAN. If your question, Senator, is on two-entry specifically, we have 11 two-entry mines operating at this time, three of them under the older grandfather provision and eight of them under approvals through specific petitions for modification of a standard.

Senator SIMON. And those three that are operating under the old grandfather provision, do you consider them safe?

Mr. MCMILLAN. Yes, we do. What we have done, Senator, is we have gone back to them through the approval process for their ventilation plans and made them comply with the appropriate task force recommendations through that mechanism.

So we have gone to all 11, using one tool of our regulations or another.

Senator SIMON. And you feel reasonably confident all 11 are operating today without hazard to the miners.

Mr. MCMILLAN. To the best of our knowledge, yes, sir.

Senator SIMON. Well, let me just again—and I thank my colleague Senator Hatch for pushing on this matter—I think there is beyond any question real concern on the part of the Members of this Committee whether in fact we are getting the kind of enforcement and safety we ought to be providing for the miners of this country. And I hope you sense that concern on the part of the Members of this Committee.

Mr. MCMILLAN. Clearly I do, Senator Simon.

I might also add, you made mention of fatalities in the industry, and though MSHA certainly takes no credit in and of itself for our current status this year as there are many factors that affect fatalities—the efforts of labor, management, and Government, the economic state of the industry, how depressed it is or whether it is expanding in terms of employment. As of this date, this year, we are at the lowest level in history to date of fatalities, in both all of mining as a general category and in coal mining specifically.

Senator SIMON. Does that apply just in total, gross statistics, or does it mean per 100,000 tons of coal mined?

Mr. MCMILLAN. The number I have given you would be just a gross number. I do not have before me today the rate.

Senator SIMON. But in fact in terms of per 100,000 tons of coal mined, those figures would not look quite that good, would they?

Mr. MCMILLAN. They probably will not for all mining, but in coal, they will be very close to being that good, Senator.

Senator SIMON. I would be interested in having from your office those same statistics per 100,000 tons of coal mined and have them inserted in the record.

Mr. MCMILLAN. I will be glad to.

[Information supplied for the record follows:]

Material Requested by Senator Simon

As stated, the number of coal mining fatalities during 1987 as of April 27, 1987, was 11 as compared to 36 on the same day in 1986 and 25 in 1985.

Mine operators are required to report fatal accidents to MSHA immediately and file their report within 10 working days. Employment and production information is required to be reported within 15 days after the end of each calendar quarter. Therefore, the following rates pertain to information provided to MSHA during the first quarter (January - March) of this year.

The fatal incidence rate per 100,000 tons of coal produced in the first quarter of 1987 was .0037 as compared to .0143 in the first quarter of 1986.

MSHA reports the rates as a function of hours worked, rather than mineral production, as we believe that exposure hours more accurately reflect accident and injury rates. The rate of fatal injuries in coal mining was .02 per 200,000 employee work-hours during the first quarter of 1987. This compares with .07 for the same period in 1986 and .05 for all of 1986. Eight miners were killed on the job during the first three months of 1987. This is fewer than one-third of the number of deaths (30) recorded in coal mining in the first three months of 1986.

Senator SIMON. And I thank you, Mr. Chairman.

Senator HATCH. Thank you, Senator Simon. We are really happy to have you here.

Mr. McMillan, let us go back to that line of questioning about the procedures involved with regard to a special investigation. You are familiar with Herschel Potter's memorandum of September 29, 1986; is that correct?

Mr. MCMILLAN. Yes, I am, Senator.

Senator HATCH. On October 14, 1986, Mr. Dennis M. Ryan, who was chief of the Office of Technical Compliance and, I might add, investigations, wrote Mr. Spicer, telling him that a special investigation should not be initiated until further information was submitted.

He criticized Mr. Potter's memorandum for what he called, quote, "broad-brush statements that lack specificity." That was regarding the violations that Mr. Potter suggested be investigated.

Are you familiar with that particular Ryan memo?

Mr. MCMILLAN. In general, yes, sir.

Senator HATCH. Okay. As I understand it, extensive sworn testimony about the bypassing of the temperature control and the on and off switches of a compressor used at Wilberg were given to Mr. Herschel Potter in March of 1985.

Now, several witnesses told essentially the same story. Are you familiar with that—is that correct?

Mr. MCMILLAN. Not of the details, Senator, I am not.

Senator HATCH. But is that correct?

Mr. MCMILLAN. I would say by the time Mr. Potter wrote that memo, he had a substantial record of affidavits and documents from a number of witnesses, yes, sir.

Senator HATCH. All right. Now, the compressor was operated, it seemed to me, in a condition that may have violated Federal mine safety standards, and Mr. Potter as well as MSHA thinks the compressor started the fire.

Now, when the compressor was finally retrieved from the mine in August of 1986, MSHA was able to determine the physical evidence to back up what was said in March of 1985, that the compressor was in fact jerryrigged, and then operated for several weeks in that condition.

Now, just let me ask you this question. What justification is there for MSHA to have delayed the special investigation until April of this year?

Mr. MCMILLAN. Senator, I think there are a couple of good reasons to have done that. MSHA's procedures follow the terminology of that section of the Mine Act which deals with any potential criminal activity and speak to willful violations of the Act. At the time Mr. Potter wrote the memo, September 29, 1986, we had not cited any violations. Mr. Potter at that point had completed the onsite portion of the investigation and in fact, I believe he then went on sick leave until his retirement, and Mr. Huntley took over the team.

But at any rate, when he did write the letter, we clearly knew—there is not any person that I have talked to in the agency who did not know that we had a serious problem with the compressor and about the overriding of the on-off switch and the temperature-sensitive switch.

Mr. Spicer asked Mr. Ryan to discuss and to give him recommendations. Mr. Ryan met with Mr. Shell and with Mr. Huntley and talked about the progress of the investigation—how soon would it be finished, how soon the citations would be issued. Those citations and the underlying violations would then be the issue that would be examined to determine if potential criminal violations had occured.

We also looked at the fact that we had this special investigation group involved with the accident investigation team from the very beginning to preserve evidence, et cetera. And we have talked to the Utah U.S. Attorney's Office, and at that point Mr. Ryan made a recommendation that the information in Mr. Potter's memorandum, which is a very brief memorandum, that we would be better off not to submit it piecemeal to the U.S. Attorney's Office.

Senator HATCH. Yes, but my point, Mr. McMillan, was in September of 1986, you had all of that information, every bit of it, and you——

Mr. McMILLAN. But we did not have the citations, and the citations——

Senator HATCH. Yes, but you had all the information to request the special investigation Mr. Potter asked for, and yet it did not occur until April of this year.

Mr. McMILLAN. One thing that we did not have was knowledge of what other issues we might also refer. We did not have that yet. We did not also have at that time the completed work of the special investigation team.

Senator HATCH. I understand that, but you had the basic facts, and my question——

Mr. McMILLAN. On the compressor.

Senator HATCH. Well, my question is, is that a correct or proper procedure; isn't that a flawed procedure?

Mr. McMILLAN. Yes, it is a correct procedure. It is one that the agency has followed for years, to wait until the citations are issued before making a referral. And the day the citations were issued, which was March 24th, the memorandum was written requesting the special investigation which did start the next day.

Senator HATCH. Okay. Mr. Potter has said that the standard about venting the compressor into the return air course lacked specificity and contributed to the problems at Wilberg. Has MSHA acted to clarify this regulation?

Mr. McMILLAN. Yes, we have.

Senator HATCH. All right. There also appears to be much confusion about the standard for fireproofing compressors. Have you acted on that standard?

Mr. McMILLAN. Yes, we have.

Senator HATCH. Okay. Now, Mr. McMillan, I recognize that you are relatively new to your position. You have indicated to this Committee during prior hearings that the agency has not been effective and that it needs to do a better job. But let me just tell you what really troubles me.

The special investigation, which could have begun last September, was delayed for six months. The longwall mining panel recommendations have yet to be acted upon. There are still no regulations covering diesel equipment. There are no regulations for hands-on training with self-rescue devices—which to me is a failure that defies logic. And I think you have kind of indicated that, too.

Now, some steps have been taken, but really only just recently.

Mr. McMillan, tell me what you are going to do over the next few weeks to act on all of these issues. You have indicated with regard to hands-on training, self-rescue devices. You have indicated you will act on longwall recommendations. But what are you going to do about all the rest—require concrete overcasts, et cetera, et cetera.

Mr. McMillan. We are looking at every issue that you made mention of. Some of them will be dealt with in rulemaking, as you have already discussed with me this morning. Some of them will be dealt with in informational bulletins to mine operators. In fact a bulletin was written to them on the issue of the ventilation, on the issue of the compressors.

In one form or another, whichever is the most appropriate, we will take what we have learned from Wilberg and apply it, either through regulation, standard or directive, to our own people and to the industry.

Senator Hatch. All right. We appreciate that, and we will look forward to those responses by this Friday.

Now, Mr. Barton, let me ask you a few questions, okay?

Mr. Barton. Yes, sir.

Senator Hatch. Could you describe the roof fall problem that existed in the tailgate of the Fifth Right section at Wilberg that caused the mine operator to ask for a modification of the mine safety standards?

Mr. Barton. Yes, sir. In this type of mining, Senator, tailgates are very difficult to maintain open. They are in close proximity to a mined-out area, and the pressures do come onto those areas and create serious roof control problems.

The tailgate entries are normally, and in the case of Wilberg, heavily timbered with wood and with crib, which is a wooden material. The walkway off of the longwall section in Fifth Right down Sixth Right was a narrow passageway. The conditions did deteriorate in that area, and at various times we had required additional supports to be installed.

During a mine shutdown, the conditions deteriorated to the point that they did have a fall in the Sixth Right return air course. The company did notify us of that condition. We did investigate the condition.

Our investigators determined that the condition did not interrupt the flow of air to the section and that in fact ventilation to the section was not impeded. Our interpretation of that section of the law, 75.305, told us that that was the intent of the return air course, to provide a means for return air to leave the working section.

At that time it was our understanding that that particular fall did not constitute a violation of the law, and the company was so informed.

Senator Hatch. Did the standard require that the tailgate be kept open as a passageway or just for air intake or air flow?

Mr. BARTON. No, sir. The standard says that it has to be examined. The standard does not specify how that examination should be conducted, specifically. The normal procedure would be to have one of our inspectors on his routine inspections travel that, and the regulation requires that the operator would examine that area of the mine weekly. At that time it was not determined that they had to physically travel through the area.

Senator HATCH. But basically you are saying the standard required it to be open for air flow.

Mr. BARTON. Open for air flow, yes, sir.

Senator HATCH. But not as a passageway.

Mr. BARTON. That is correct, sir. We have other regulations requiring escapeways——

Senator HATCH. Okay. Was the request for modification in writing as required under the Mine Safety Act?

Mr. BARTON. It was our understanding, Senator, that a request for modification would be required if the area was substantial to the point that we could not determine that air was being coursed correctly.

Senator HATCH. So in this case, was there a request for modification in writing?

Mr. BARTON. No, sir. In this case, we did not require a petition of modification.

Senator HATCH. Okay. Did you follow the procedures for allowing the Union a hearing after they protested the proposed modification?

Mr. BARTON. I beg your pardon, Senator?

Senator HATCH. Did you follow the procedures that would have given the Union a hearing after the modification was requested?

Mr. BARTON. We followed the same procedures in this investigation that we would have followed had a petition for modification been requested.

Senator HATCH. Okay. Did you inform the Union prior to granting the modification?

Mr. BARTON. First, Senator, we did not grant a modification. We made a determination that there was not a violation of the Act in this particular case which did not require, then, a modification.

Senator HATCH. But did the Union request a hearing?

Mr. BARTON. No, sir, they did not request a hearing.

Senator HATCH. I see. Mr. Barton, what is your understanding about the type of emergency evacuation plan that was used at Wilberg at the time of the fire? Was it an up-to-date plan as required by MSHA?

Mr. BARTON. The plan that was in effect and on file with MSHA was approved in 1974 and had been approved with the prior mining company in operation.

Senator HATCH. That was when Peabody Coal Company operated Wilberg?

Mr. BARTON. Correct, Senator.

Senator HATCH. Okay. Did that plan encompass the longwall techniques in use at Wilberg at the time?

Mr. BARTON. It did not specifically encompass that method of mining.

Senator HATCH. Because no longwall mining was actually in fact done back in 1974.

Mr. BARTON. That is correct, Senator.

Senator HATCH. Okay. Let me ask you what this is. I have been concerned, because if this is not a modification, I want to ask you about it.

I am referring to the letter to Mr. Bocook. The date it was filed was November 26, 1984, and it is from you.

> Dear Mr. Bocook, your proposal, received November 16th, 1984 for the evaluation of the Fifth Right longwall return appears acceptable to meet the requirements of 30 C.F.R. 75.305. However, if conditions deteriorate further, a petition for modification of this safety standard may be required, or the longwall panel may have to be abandoned if sufficient air flow cannot be maintained across the longwall face.

That is not a modification or a grant for a modification?

Mr. BARTON. No, sir. In that letter, I do state that it was not considered a violation at that time.

Senator HATCH. Well, let me ask you this. After you had done this letter, why didn't you go forward and give the Union a hearing? As I understand it, the Union asked for a hearing.

Mr. BARTON. No, sir. The Union did not contact my office.

Senator HATCH. Well, I was told they did, but you are saying they never contacted you.

Mr. BARTON. To my knowledge, sir, there is no record of the Union having contacted MSHA.

Senator HATCH. All right. Did the evacuation plan encompass the use of diesel equipment in this mine?

Mr. BARTON. Senator, at this particular point, I do not know.

Senator HATCH. Okay. Why didn't your office require Emery to file an up-to-date evacuation plan encompassing longwall mining techniques in the use of diesel equipment?

Mr. BARTON. The plan that you are referring to had not been brought to the attention of my office. It would not be unusual for a mine to have a plan of that age, nor would it be unusual for a mine to be operating under a plan approved for prior operators. If plans are approved for the mines, and as new operators take over mines, if there is no substantial change in the management at the mine level, and if the company does not desire to change the plan, we consider the plan to be a part of the mining operation and still in effect for subsequent mine operators.

Senator HATCH. Okay. Was Emery Mining Corporation using a new plan at the time?

Mr. BARTON. Emery Mining Company had adopted and had implemented a new plan, which they had not submitted to our office for approval.

Senator HATCH. But they had submitted that to you?

Mr. BARTON. They had not submitted it, sir.

Senator HATCH. Okay. Now, is the present mine being operated by Utah Power and Light—are they doing it pursuant to an updated new plan?

Mr. BARTON. Presently, yes, sir. They have submitted a plan to us which has been reviewed, accepted after modification, and they are now operating under a currently approved plan.

Senator HATCH. Well, let me ask you this. How can we be assured that you will not overlook a mine company failing to file a plan in the future, because here you have Emery, that you say had a new plan, an up-to-date plan, but they had not filed it with you. How do you overcome that problem so that you have those new plans in the future?

Mr. BARTON. We are presently instituting a quality assurance program which will require at our field office level a review of these plans on a periodic basis. We will have a second level which will require review of the procedures being followed in those field offices. And finally, there will be a review by my office in which I will be personally involved to determine that the proper reviews are being conducted both at the field office and subdistrict levels.

Senator HATCH. My staff and even I have been told by several Union members that it was customary for MSHA inspectors or district officials to give verbal variances from time to time, verbal variances from safety standards, when requested to do so by Emery Mining Corporation personnel.

Have you ever given a verbal variance, and do you have any knowledge of any of your staff having given verbal variances as well at the Wilberg Mine or at any other level, in the field or otherwise, giving verbal variances?

Mr. BARTON. Senator, I have also heard this comment. I cannot determine that my office nor anyone under my jurisdiction has given a verbal variance for a mandatory standard.

Senator HATCH. I see. How about other standards?

Mr. BARTON. There have been cases, Senator, in the case of roof control plans, ventilation plans, that in the past we have given companies verbal approval to do specific things until such time as we could follow up with written approval. That has been discontinued.

Senator HATCH. Okay.

Mr. Barton, do you think the miners on the Fifth Right section of the Wilberg Mine were adequately trained in the use of self-rescue devices?

Mr. BARTON. No, sir, I do not.

Senator HATCH. Okay. Why was the air compressor located in Number 36 Crosscut? Why was it not housed in a fireproof structure?

Mr. BARTON. Senator, at the time that this tragedy occurred, it had not been our practice to determine or to consider this type of an air compressor as a compressor station. This compressor, although quite large, was mobile and was moved quite often throughout the mine to various locations where construction work needed to be done.

We considered compressors such as this to be mobile pieces of equipment and did not apply those sections of the law to this type of equipment.

Senator HATCH. You have changed that approach now?

Mr. BARTON. Yes, sir, we have changed that procedure.

Senator HATCH. As a result of this fire?

Mr. BARTON. Yes, sir.

Senator HATCH. All right. Now, Mr. Barton, why was the intake air course in the belt entry not separated by properly maintained and constructed stoppings along the First North fifth longwall panel, as required by the approved ventilation system?

As I understand it, six eight-inch by sixteen-inch blocks were missing at the bottom of one stopping, and there were several other holes at other stoppings, as well.

Mr. BARTON. Senator, what you are saying should have been done. The last day of record of an inspector being on the Fifth Right section was December the 6th. That inspector's notes indicate that he did in fact travel the belt haulage system from the face of Fifth Right out to and through the dogleg to the compressor station. His notes indicate that he observed those stoppings and that there were no holes in the stoppings on that date.

Senator HATCH. Mr. Barton, as I understand it, if the compressor had been properly ventilated into the return air course, the effects of the fire would have been greatly diminished. Do you agree with that?

Mr. BARTON. Yes, sir. It would have been a different situation completely.

Senator HATCH. Why did your investigators, then, not require the company to ventilate the compressor properly?

Mr. BARTON. At the time that this compressor was observed, it was not considered to be a compressor station. And as a piece of mobile equipment, that requirement would not have been required.

Senator HATCH. In sum, Mr. Barton, your office allowed the Wilberg Mine to be operated without an approved emergency evacuation plan. I think there is evidence here that you denied the Union its statutory right to contest the modification request, even though you say there was no request. But I look at another letter, March 18, 1985, to Mr. Joe Main, Administrator, Department of Occupational Health and Safety, United Mine Workers of America, here in Washington, D.C., and it is signed by Joseph A. Lamonica, Administrator for Coal Mine Safety and Health.

Here, it says, "You are correct that the procedural safeguards of the petition for modification process were bypassed. Accordingly, steps are being taken to be sure that this does not happen again."

Now, it looks to me like they considered that a modification.

Mr. BARTON. Senator, that response was written after the investigation which determined that the examination of the return air course should have included travelling the complete air course.

The error that they indicate there would have been an administrative error, in that I should have passed, according to our legal staff, I should have passed the company's request for being allowed to operate——

Senator HATCH. In other words, for the modification.

Mr. BARTON [continuing]. I should have sent it on in to Washington for them to take action on it, yes, sir.

Senator HATCH. I see. So you should have either approved or disapproved the modification, and sent it to Washington?

Mr. BARTON. I believe, sir, the indication is that I should not have acted on it at all; that I should have immediately sent that letter from the company to Washington.

Senator HATCH. You should have sent it right back to Washington for their approval or disapproval.

Mr. BARTON. Yes, sir.

Senator HATCH. I see.

Mr. CLAIR. Senator, may I just say that a request for a modification is not granted at the district level. Mr. Barton would not have been authorized to grant that modification.

Senator HATCH. Okay, but there must have been some request, is my point.

Mr. CLAIR. If a request was received from the mine operator, it would have been forwarded to MSHA headquarters, published——

Senator HATCH. Right, I agree with that. But was the request received, then? You see, there, it indicates that a request had been received.

Mr. CLAIR. Mr. Barton did not consider it to be a request for modification.

Senator HATCH. So he did not consider it to be a request for a modification.

Mr. MCMILLAN. Senator Hatch——

Senator HATCH. You see, the problem is, and where I am having trouble, is I have got a letter of October 25th, 1984 to Mr. John W. Barton, District Manager, from D.W. Bocook, the mine manager, subject Wilberg Mine I.D., and you give the I.D. number, Fifth Right longwall return, which I think is a request.

It says, "The reasoning for the variance request is as follows." I do not know how you can say it much stronger than that.

Mr. MCMILLAN. I think, Senator Hatch, the problem lies in the fact that the interpretation that the District put on that was that there was not a violation at all, and that is what——

Senator HATCH. Well, my point is how can Mr. Barton come before this Committee and say there was no request, when it is right here in writing?

Mr. MCMILLAN. Well, clearly it was a request from the company.

Senator HATCH. Well, that is my point.

Mr. MCMILLAN. And there was an error; there was an error on our part.

Senator HATCH. But you said there was not a request. And then you say, well, you should have submitted that immediately to the— all I want to do is get it straightened out. This was the request. You say you should have submitted it immediately to Washington. You got criticized for not doing that.

Is that a fair characterization, or am I mischaracterizing?

Mr. BARTON. Senator, in many instances, companies ask for waivers, variances, modifications——

Senator HATCH. Right. This one was in writing.

Mr. BARTON [continuing]. For items that are not required to go that process.

Senator HATCH. Okay.

Mr. BARTON. They are not familiar in some cases with all the legal language of the Act and some of the legal decisions that have been passed.

The wording that the company put in their letter, I believe, was "variance". Our investigation indicated that they did not need a variance, a modification or a waiver; that they in fact were not even in violation of the law.

Senator HATCH. Well, it says,

> The reasoning for the variance request is as follows: (a) the return is not a designated escapeway. The belt and the intake are the escapeways for the section. (b) The

mine has no record of any methane; (c) the primary ventilating course is through the bleeders and out Eighth Right or over the gob of Sixth Right and Seventh Right. This bleeder was inspected by Mr. Metakovik and found to be in good condition and is more than capable of handling the quantity of air to run the longwall. To require an inspection of the entire return entry even if rehabilitated through the closed off area would be a serious hazard to any involved, and any air flow can be maintained through the entire entry.

That looks like a pretty strong request, backed up by reasons.

Well, let me just say this. Let me just sum it up again. Your office allowed the Wilberg Mine, it seems to me, to be operated without an approved emergency evacuation plan. You denied, it seem to me, the Union its right to contest a modification request, which I consider that to be. Miners were allowed to go underground without training in the use of self-contained self-rescue devices.

We now know that the mine was not being operated in accordance with MSHA's own safety standards. The mine was not ventilated adequately.

Now, those are things I think are pretty well proven, and most everybody agrees with. If you do not, I want to know why.

Mr. Barton, do you feel that on December 19th, 1984 that MSHA was really protecting the health and safety of the miners involved in this particular disaster?

Mr. BARTON. Senator, to the best of our knowledge, we were enforcing the law as we interpreted it at that time.

Senator HATCH. But you really were not protecting these miners because the law was inadequate, it seems to me. And we have admitted here today that we have had to make a lot of changes and we are going to make a lot of changes, giving me the dates that they will be made by Friday.

Mr. BARTON. Senator, I could not agree with you more, these 27 men died in vain, if proper action is not taken to correct conditions that we have now identified.

Senator HATCH. Well, my point, Mr. Barton—I am not trying to pick on you or anybody else—my problem is that that is why we have the Mine Safety and Health Administration, so that we anticipate these problems and that we resolve these problems in advance so that people do not lose their lives. And in this case, we did not anticipate them, we did not resolve them—when I say "we", I mean MSHA did not, and the company. And the thing that is really astounding to me is that you still have not.

It is one thing to say that these miners died in vain—I am not blaming you necessarily—that is the leadership of MSHA that has got to make these changes. But that is astounding to me. We all admit that they should not have died in vain. We all admit this was a terrible tragedy that could have been prevented.

We all admit that there were a lot of mistakes made here, and we have all admitted that MSHA could have had regulations that might have resolved this problem in advance—and we still do not have them. So you can see why I am a little excited about having that letter by Friday, with due dates that are reasonable, and hopefully in time to prevent the death of miners in the future and to help the operators to know how to operate these things so that they have the guidelines and the approaches that they know they have to live within.

I appreciate you all coming. I think there is a lot of blame here that can go to MSHA. I think anybody looking at this fairly has to conclude that that is so. And it is always easy in retrospect, too; I will add that. But there is a lot of room for blame here, and I just want to make sure that you understand that and that we get these problems resolved, and hopefully, in the interest of everybody including MSHA, because I have been a strong supporter of MSHA in the past and the work that you are trying to do. I know that you do try to do a good job. But here is a case where the problems really fell through the cracks.

Let me turn to Congressman Nielson.

Mr. NIELSON. Thank you, Senator Hatch.

First of all, I would like to thank MSHA for the many briefings they have given me and my staff and through Congressman Gaydos and his committee. You have been very cooperative, and I appreciate that.

Having said that, now I want to ask a few questions.

First of all, I would like to return to you, Mr. Barton. You say there was no variance needed, there were no modifications needed, and as far as you are concerned, there was no violation of the law. That is what you said, basically.

Mr. BARTON. Based on the results of our investigation and the recommendation of my investigating group, yes, sir.

Mr. NIELSON. All right. I will accept that. But the company must have felt there was a violation of the law or that they needed some special permission, or they would never have sent you that letter. Is that correct?

Mr. BARTON. Yes, Congressman.

Mr. NIELSON. The company must have felt a little bit guilty, or maybe not guilty, but at least the need to get permission before they proceeded with the mining, is that correct, after the strike?

Mr. BARTON. Apparently so, Congressman.

Mr. NIELSON. And because you thought it was not a violation of the law, you did not respond to their request for a variance in writing, is that correct?

Mr. BARTON. We responded by telling them that we did not consider it a violation, but if conditions deteriorated, they would have to go to a petition for modification.

Mr. NIELSON. You did not send a copy of that response or the request to the Union, then.

Mr. BARTON. I cannot really answer that. I would have to look in our correspondence file to see who was on the list.

Mr. NIELSON. Okay. The unions claim they were not fully informed; yet some of them this morning said they were all aware of the condition, but they did not understand why the waiver or so-called—they considered it a waiver—was granted. Was that ever discussed with you at any time by the Union members?

Mr. BARTON. No, sir.

Mr. NIELSON. Let me ask you another question. Are agency rules and procedures specific and mandatory, as I understand, throughout the Nation—or are they interpreted by district? For example, someone mentioned this morning that MSHA is a little more lenient in the West than you are in the East. Is there anything to that?

Mr. Barton. Mr. Nielson, I really cannot comment on what procedures are followed in the other nine districts. From the best of my knowledge, I follow the procedures that are outlined by Washington and are discussed during our staff meetings.

Mr. Nielson. Are district and subdistrict managers given some flexibility in interpreting these laws, or MSHA guidelines?

Mr. Barton. Only in those areas where the law allows that flexibility, sir.

Mr. Nielson. Okay. You do not think that they are more lenient in the West than they are in the East, as far as mines safety is concerned?

Mr. Barton. I do not believe so, sir.

Mr. Nielson. Okay. It was also said that Western-based MSHA inspectors are a little too close and too buddy-buddy, shall we say, with the mining operators. That accusation was made, also.

Mr. Barton. Well, Congressman, as you know, the towns in the West are quite isolated and quite small. It would be hard for an inspector living in a small community such as Orangeville or Huntington, Utah, not to be in close touch with all elements of the community, which would include the mine operators as well as the Union representation.

Mr. Nielson. Would that extend to the fact that you announce when you are coming and let them know in advance when you are coming?

Mr. Barton. Sir, that is a violation of law. I do not believe that has occurred. If it has occurred, that is illegal.

Mr. Nielson. I have heard that it is common knowledge that MSHA inspectors would announce when they were coming, when they would be showing up for a tour. How would you account for those kinds of stories if your previous statement is correct?

Mr. Barton. There are certain types of investigations that we do notify the company and the Mine Workers representatives ahead of time. If it is not specifically prohibited by the Act, and we need certain company officials and/or Union officials to do the job properly, we would notify those people.

Mr. Nielson. You would notify them as you arrive, or a day or two in advance?

Mr. Barton. If it is something where we need specific people there, we would notify them in advance.

Mr. Nielson. Enough time to clean things up or straighten things out?

Mr. Barton. Not for inspections, Congressman. This would be for specific types of things where we would need the technical expertise of the company to do our job.

Mr. Nielson. In the testimony of Mr. McMillan, he said there were 34 violations, 9 of which contributed to or could have contributed to the seriousness of the fire.

How many of these violations should have been identified in the December 6th inspection? How many of those 9, or 20, or 30 or 40—choose whichever number you want—how many should have been caught?

Mr. Barton. Based on our review of those citations today and of the inspection that was conducted, I would have to say most of those. There were some that apparently were not there during the

December 6th visit to this section, but some of the others should have been cited, sir, based on our present analysis of what would have been required.

Mr. **Nielson**. Okay. Looking at just the nine that contributed to the accident or the seriousness of the fire, how many of those nine should have been caught?

Mr. **Barton**. Well, Congressman, I would have to look at the nine again right now to make an accurate determination. The ones that probably could not have been caught would have been the holes in the stoppings, which apparently were not there at that time, based on the inspector's report.

Mr. **Nielson**. What is your impression of how those holes got there if they were not there on December 6 but were there on December 19?

Mr. **Barton**. One of those holes, sir, the largest of those holes, appeared to have been damaged by mobile equipment that had run into the stopping and knocked a hole in it with some, I believe, water pipe or pipe of some type, that protruded on through the stopping. The other two were quite small, and in all likelihood were holes through which piping and/or cables had been conducted, and at the time the inspector observed those, they were not determined to be of substantial enough size because they were in all likelihood closed off.

I cannot say that for a fact, sir. That would be the normal procedures.

Mr. **Nielson**. If I may follow up on the question Senator Hatch raised, apparently Emery Mining was able to operate this coal mine, Wilberg, on a plan that had apparently not been checked or reviewed by MSHA for 10 years. I know they were not in the business for 10 years, but the plan they were using had not been reviewed for 10 years.

Is that a correct statement?

Mr. **Barton**. Congressman, the plan had been in effect since 1974, the approved plan, and they had been operating under that plan for that period of time. I would have to say that our inspectors in that field office would have been required to review that plan prior to every inspection at the mine.

It is apparent that they determined that they thought the plan was approved and were inspecting under that plan.

Mr. **Nielson**. Was Emery Mining operating on the assumption that plan was okay, since you had not checked it with Peabody—in other words, they were using the same plan that Peabody used, basically?

Mr. **Barton**. As far as I can tell, Senator, they had operated under that plan for a number of years and had just recently adopted and put into operation a new plan which had not been sent to our office for review and approval.

Mr. **Nielson**. Okay. Let me talk to Mr. McMillan, the Acting Secretary.

You are in a most unenviable position, having been recently appointed Acting Director of MSHA. We recognize and appreciate that fact. Also, from all accounts, we understand you are doing a very good job, and we wish you well in whatever you decide to do when the new MSHA Director is confirmed.

In the March 24 Department of Labor news statement that accompanied the release of the Wilberg investigation preliminary report, MSHA summarized the list of citations that were assessed Utah Power & Light and Emery Mining Corporation for management of the Wilberg operation. I think you said nine were for violations MSHA determined contributed directly either to the fire or to the seriousness of it, and the 25 additional citations they determined did not to contribute directly.

And again I ask you the same question I asked Mr. Barton. Why didn't the MSHA inspectors spot some of these violations, particularly the nine serious ones?

Mr. McMILLAN. I do not have a good answer for you, Mr. Nielson. I am troubled by it, because the issue that it raises that concerns me, as Mr. Barton has indicated, those plans should have been reviewed prior to every regular inspection. I cannot in my own mind conclude that if they had been fully, thoroughly and completely reviewed that someone would not have raised the question as to that fact, that they were out-of-date.

So either the review was pro forma and not of substance, or the review was not fully made. In any case, what that says in a larger context is that we have concerns about our inspection process.

Mr. NIELSON. Did Union officials attend the inspection on December 5 or 6? I have two different dates; I am not sure which is right.

Mr. McMILLAN. I believe that they did.

Mr. NIELSON. Did they raise any of the questions with you or the MSHA inspectors?

Mr. McMILLAN. I would have to really almost ask Mr. Barton to try to respond to that. I do not think any issues were raised.

Mr. NIELSON. And did company officials also attend?

Mr. BARTON. Yes, sir. Company officials did attend this. To the best of my knowledge, representatives of the miners did travel with us; if not on all, they did travel with us on part of our inspection. The inspection did extend over several weeks.

Mr. NIELSON. That inspection also went into Sixth Right, did it not?

Mr. BARTON. The inspection did go across the longwall face and Sixth Right down to the edge of the fall that we spoke of before in Sixth Right.

Mr. NIELSON. What comments were made by either Union or company about that blockage in Sixth Right?

Mr. BARTON. Congressman, there is no record in my office of ever having been contacted by the Union or the company pursuant to any of these problems.

Mr. NIELSON. No comments were made during the inspection by anyone?

Mr. BARTON. Not that I am aware of, sir.

Mr. NIELSON. Okay. Let me ask one other question that has troubled me a little bit. I have talked with both Union and company people on this issue about the compressor. Neither the Union nor the company buys the story or the allegation that the compressor was at fault. They have claimed there were some problems with the compressor and so on. But I have heard these kinds of statements. First of all, it would be impossible for something to run that long without somebody wondering why it was in operation that long. I think it is incomprehensible that they would not notice it, either the workers or the management and so on.

What have you done to try to convince both the Union and the company that that allegation is correct? You made some comments that you eliminated the electrical cables as a source of the fire because you determined they were damaged by the fire, and hence not the cause of the fire; regarding the belt entry, there was no smoke until the aluminum overcast failed; and there was also no indication of sabotage.

And I guess I should ask the gentleman who raised the question, how do you convince people that that is the correct possibility, because many of them still feel that the fire started on the face, or else along the Fifth Right somewhere? They still feel that the compressor is too convenient a scapegoat, shall we say.

Mr. HUNTLEY. Congressman, in addition to all the things discussed in the report, I discussed where Mr. Potter came to that conclusion very early. Even after that, I engaged a special consultant to independently determine what the cause of the fire was. He came to that same conclusion.

In addition, I became involved after that announcement was made and went into this investigation not convinced that the compressor was the cause of the fire. I made my independent study and determined that it was actually the cause of the fire.

Mr. NIELSON. How do you respond to the statement that it would be impossible for a compressor to run for 60 hours without someone noticing it was running with no regulation and so forth? How do you respond to that statement, that they surely would have noticed if it had been running continuously all that time?

Mr. HUNTLEY. There is testimony to indicate that at least two mechanics knew that it was running, recognized that it was running, and one belt man. So it was operating; apparently, the proper people did not know that it was operating.

Mr. NIELSON. Mr. Huntley, I will just ask one question. Why did you relax the standards on the mine in East Carbon, the Kaiser mine? You closed that down just recently, MSHA did, and then just recently reopened it again, even though it still did not have a third entry and so forth. Why did MSHA allow that mine to reopen?

Is this a parallel case to Wilberg or not?

Mr. BARTON. Is that question for me, Congressman?

Mr. NIELSON. Anyone. Why was the Kaiser mine——

Mr. BARTON. The Kaiser mine, the Sunnyside No. 1 Mine, sir, and the section is 21 Left, did start developing a two-entry system in conflict with the prohibition we had put on that.

My inspectors on their routine visits to the mine did observe this and did issue a closure order for that condition. The company then appealed that closure order for an expedited hearing before the Commission. At that time, the District, my office, was only involved as advisory, and presently it is being litigated.

Mr. NIELSON. Let me ask one more question if I may, Senator Hatch.

How could the compressor have caused the fire when there was combustible material all around the compressor that did not ignite?

Mr. HUNTLEY. The pattern of fire and burning in this case is as you would expect it to be with the fire starting at the compressor as I described. Roof coal in a mine is particularly troublesome, and will lead to a spread of fire very quickly.

This fire started; the burn pattern is such that it started where I described and went downwind, but not against the air flow.

Mr. NIELSON. But there was gasoline in cans right by it that did not burn, with other combustible materials, paper on boxes and so forth that did not burn—why?

Mr. HUNTLEY. There was simply enough velocity of air to cool it——

Mr. NIELSON. It went by too fast?

Mr. HUNTLEY. No. Simply enough velocity of cool air to prevent that from occurring.

Mr. NIELSON. When I started this meeting today, I indicated I think there is enough blame to go around. And I agree with Senator Hatch that this is certainly a very tragic thing, and we are very sorry about it. The only thing we can do now is to find some way to prevent this in the future. So we need to be diligent, and your actions with regard to Kaiser mine make me a little nervous; that you closed them down, and then a week later, you change your mind and let them start again.

Also, it seems to me the company should not have asked for the variance. I am not sure MSHA should have granted it, either verbally or by saying it is not a violation.

I am also not sure that the Union did not have some responsibility in telling their men not to work, knowing of the dangerous condition.

I think a little blame can be assessed all the way around. But I think the Senator is right, that if MSHA had been tough in enforcement of the regulations and had been insistent that they be carried out, had reported this request by the company directly to Washington, immediately, a lot of steps could have been taken that might have prevented the loss of life, and we want to prevent that in the future.

I thank the Senator very much for the opportunity to participate in these hearings, and I hope that I am not too belligerent to all parties. You will find I am mean generally to everybody, and the company will find that out when it is their turn as well.

But anyway, there is some blame to go around. I really believe that we have got to make sure that when there is a variance, that such information is given to all parties concerned—the workers who have to work there, the unions, and so forth—and it needs to be done in such a way that everyone understands the situation, and if there is a problem, as there was in this case, they have a chance to resolve it before they are forced to work under unsafe conditions.

I thank the Senator.

Senator HATCH. Thank you, Congressman Nielson.

I want to thank all of you for being here. I have to tell you that I reserve judgment on whether or not the compressor is the cause of this fire. I think there are a lot of facts that have been brought out here in the hearing that would indicate that there may have been another cause. But I do understand your position, and I do understand that you have made a stand on this, and you have made your decision, and you are going to abide by that.

I want to thank each of you for coming. I just hope that we can work together, this Committee and of course the similar Committee in the House, with you, to help resolve some of these problems.

And Mr. McMillan, I agree with Congressman Nielson—you are new, but you are really bringing in a good force here, and we are very pleased with what you are trying to do. I have hit you pretty hard here today, because I think it is your responsibility at this point, and we have just got to get these things done.

So I am going to hold you responsible for it, and let us just do it. I think it is in the best interest of everybody. Thank you for being here.

Mr. McMILLAN. Thank you, Senator.

Senator HATCH. I appreciate having this opportunity to interrogate you.

[The prepared statement of Mr. McMillan, with attachments, follows:]

TESTIMONY OF ALAN C. McMILLAN
DEPUTY ASSISTANT SECRETARY
FOR MINE SAFETY AND HEALTH
BEFORE THE
COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

April 27, 1987

Mr. Chairman and Distinguished Members of the Committee:

I am pleased to appear before you today to review MSHA's preliminary findings regarding the tragic Wilberg mine fire which claimed 27 lives on December 19, 1984. There are few words that can adequately express either the sorrow or frustration we at MSHA feel when disasters such as this occur. Indeed, each time a miner is fatally injured, disabled or loses work because of an accident in a mine, we are reminded that our work is not completed and that all of us who are involved in the mining community must redouble our efforts, review our activities and determine what, if anything, can be done to prevent future occurrences. It is the responsibility of those of us in the Federal sector, to set the standards, to enforce the law, to take whatever steps are necessary to prevent tragedies. But achievement of lasting changes requires the commitment and effort of the entire mining community--labor, management and government.

Secretary Brock and I recognize the efforts and concerns of Chairman Kennedy, Senator Hatch, other members of this Committee and Representative Nielson, and appreciate this hearing so that we can in this forum present our findings and share with you the preliminary report of our investigation into the cause of the Wilberg mine fire. Before I summarize the findings of the report, I would like to highlight the chronology of events that occurred at Wilberg, then briefly discuss the citations that MSHA has issued and last, present those actions that have already been taken to help prevent similar tragedies.

Today, I have with me Mr. Thomas J. Shepich, Mr. Edward P. Clair, and also Mr. Donald W. Huntley, who is in charge of the investigation into the Wilberg mine fire. Mr. Huntley will provide a more technical discussion of the rescue and recovery operation and the activities of the investigation team. I am also accompanied by Mr. John W. Barton, MSHA's Coal Mine Safety and Health District 9 Manager from Denver, Colorado, as you requested.

On December 19, 1984, shortly after 9:00 p.m., Mountain Standard Time (MST), a fire broke out in Emery Mining Corporation's Wilberg Mine near Orangeville, Utah. At the time, the mine employed 326 miners working on three shifts. The mine had three sections which used continuous mining machines to remove the coal and two longwall panels. Access to one longwall panel was by the so-called 5th Right section where two parallel entries intersected one end of the longwall. When the fire broke out, 28 of the 80 miners underground were in the 5th Right section. Extra miners had been assigned to 5th Right and key management personnel were present on that shift as the company was attempting to set a longwall production record.

As previously stated, the fire was detected at about 9:00 p.m. (MST) by an employee who saw smoke in the intake air entry and notified personnel on the surface by telephone. The 5th Right section was informed but evacuation was delayed to allow further evaluation of the situation. A short time later, surface personnel were notified of flames. The 5th Right section was informed and evacuation commenced. A general mine evacuation also began at that time.

The fire origniated at an air compressor which was located near the mouth of the 5th Right section on the intake-air entry that supplied ventilating air to 5th Right. Smoke and gasses from the fire were carried by ventilating air to the mine's 5th Right section. Twenty-seven miners died as a result of the fire. Only one miner was able to escape.

The first mine rescue team went underground at 11:30 p.m., by which time the mine had been placed under a section

103(k) order of the Mine Act. (The 103(k) order authorized MSHA to take whatever actions were needed to protect the miners.)

Responsible officials of Emery Mining Corporation, the United Mine Workers of America, the Utah State Mine Inspector's Office and MSHA cooperated in the planning and decisionmaking throughout the rescue attempt. Successive teams sought to enter 5th Right over the next 3 days (December 20, 21, and 22) to locate the 27 missing miners. The bodies of 25 victims were located and some were moved to a central location in the mine. On December 23, the fire flared at the entrance of 5th Right and the firefighters and rescue teams were ordered out of the mine. The bodies of the 25 victims who had been located were left underground because of the urgency of the situation. As all parties agreed that there was no hope for the two missing victims and the fire could no longer be fought safely, the openings of the mine were sealed to deprive the fire of oxygen.

MSHA began its formal investigation into the accident December 27, 1984, the purpose of which is to determine the cause of the accident to prevent future similar occurrences. The investigation is also designed to identify any other factors which may have contributed to the accident. Officials of Emery Mining Corporation, the UMWA and Utah Power and Light Company cooperated in the investigation. MSHA also worked closely with the Utah State Mine Inspector's Office, the Emery County Sheriff's office, the Utah State Fire Marshall's office and the Federal Bureau of Investigation.

At this time I would like to thank all those offices and individuals who participated in and/or provided assistance or information during the course of the investigation. Their help was critical to its thoroughness.

Because the mine was sealed and evidence indicated the fire was still smoldering, MSHA's initial efforts were concentrated on obtaining and reviewing mine records and other documents and on conducting extensive interviews with management and miners.

Recovery of the mine began February 13, 1985. The primary objectives were to recover the victims' bodies and enter the fire area to complete the investigation of the accident. The recovery process was necessarily slow and painstaking as appropriate steps were essential to ensure the safety of those individuals involved in the recovery effort. Additionally, the condition of the mine, which had deteriorated over time, complicated the effort. The bodies of the two missing victims were eventually located and all the bodies were removed from the mine December 11, 1985. MSHA was able to complete its onsite investigation by August 18, 1986.

On March 24, 1987, MSHA issued its preliminary report and issued a total of 34 citations to Utah Power and Light, 9 of which were determined to be contributory to either the cause or seriousness of the accident. It is our conclusion that the fire originated at the compressor which had been improperly installed and maintained. MSHA has issued the following citations as contributing to the cause of the fire:

1) failure to properly maintain the on-off control switch and the over-temperature switch on the air compressor, and the

2) failure to conduct frequent examinations of the air compressor, allowing the unsafe condition to go uncorrected.

Contributing to the seriousness of the accident were seven additional violations. Attached to my statement are replicas of all the citations MSHA issued.

At the same time, MSHA actively began a special investigation into the Wilberg mine fire to determine if any of the violations cited were knowingly or willfully committed. Willful violations are subject to criminal prosecution, one of the most severe sanctions contained in the Mine Act.

Personnel from MSHA's special investigative unit had been involved with the accident investigation team throughout their activities. However, it was not until the violations were identified and issued that a final determination could be made as to whether a special investigation was warranted.

MSHA is committed to conducting an expeditious and comprehensive special investgation into the Wilberg violations. To that end, personnel from MSHA's investigation team and the Solicitor's office have held discussions with representatives of the U.S. Attorney's office in Utah. I which to assure you that MSHA's inquiry into the potential willful nature of the violations will be thorough and professional.

As a result of the accident and investigation, MSHA has taken several actions to reduce the likelihood of similar occurrences. First, a 5-month moratorium to prevent any expansion of two-entry mining was imposed. During the moratorium, a task force, comprised of MSHA and Bureau of Mines personnel conducted a study of the two-entry longwall mining method. The task force issued its report in April 1985, which concluded that two-entry longwall mining is feasible if suitable safeguards are in place.

Also, MSHA conducted an evaluation of the SCSR training being provided at over 1,000 underground mines and, as a result of that evaluation, we required additional training at more than 200 mines. Further, MSHA district managers were instructed to reemphasize the review of firefighting and evacuation procedures at all underground mines and reminded of the need to follow the formal petition process to modify the application of a specific standard.

MSHA has also notified mine operators that the requirement for air compressor stations to be in fireproof enclosures has been clarified and that compressors using combustible fluids must be equipped with automatic fire suppression devices when operating unattended. In addition, we are encouraging mine operators who use aluminum overcasts to put a coating material on these structures to improve their durability in a fire. Future ventilation plans will require such structures to have substantial ability to withstand fire damage.

We are hopeful that these actions along with others we have initiated--and will initiate in the future--will result in improved safety and health conditions in the Nation's mines and help prevent future tragic events. We realize that these efforts, indeed any efforts taken at this time, cannot reduce the pain and suffering of the families, those mothers, fathers, wives and children, who suffered a loss as a result of the Wilberg disaster. We can only hope that they can find comfort and solace in the fact that it is our intent to assure, to the extent humanly possible, that our investigation into the findings of the causes of this tragedy and our actions based on those findings will result in improved safety and health conditions for the mine workers of today and the future.

Mr. Chairman, that concludes my prepared statement. I would like to take this opportunity to publicly thank all who assisted us during the course of the investigation. I particularly want to acknowledge the members of the mine rescue teams who volunteered and labored in a valiant effort to rescue the trapped miners.

At this time, I would like Mr. Huntley to discuss in more detail the findings of MSHA's investigation into the cause of the fire. He will be assisted by Mr. Robert Painter, a member of the investigation team who will identify the various locations on the map of the critical area of the mine.

Mine Citation/Order

U.S. Department of Labor ATTACHMENTS
Mine Safety and Health Administration

Section I—Violation Data

1. Date Mo 03 Da 24 Yr 87
2. Time (24 Hr Clock) 0750
3. Citation/Order Number 2844485

4. Served To James T. Jensen - Counsel for EMC
Dave Lauriski - Dir. of Safety, UP&L

5. Operator Emery Mining Corporation and its success
in-interest Utah Power & Light Co., Mining Div.

6. Mine Wilberg

7. Mine ID 42-00080 (Contractor)

8. Condition or Practice

8a Written Notice (103c) ☐

The 150-horsepower Ingersoll-Rand Electric Air Compressor, Serial No. 110740U79379, Company No. 14-025, located in 1st North, No. 4 Entry, crosscut 36 was not properly maintained to assure safe operating conditions in that the on-off control linkage to the circuit breaker located in the Crouse Hinds enclosure and the safety shut down temperature switch were rendered inoperative and the compressor was not removed from service.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984, The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a ☐

9. Violation A. Health ☐ Safety ☒ Other ☐ B. Section of Act — C. Part/Section of Title 30 CFR 75.1725 a

Section II—Inspector's Evaluation

10. Gravity

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☒

B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C. Significant and Substantial (See Reverse): Yes ☒ No ☐

D. Number of Persons Affected 28

11. Negligence (check one)
A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☐ E. Reckless Disregard ☒

12. Type of Action 104-d-1, — —

13. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐

14. Initial Action A. Citation ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number F. Dated Mo Da Yr

15. Area or Equipment

16. Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17. Action to Terminate

Air compressor removed during the mine investigation of the fire area on or about August 1, 1986.

18. Terminated A. Date Mo 08 Da 01 Yr 86 B. Time (24 Hr Clock)

Section IV—Automated System Data

19. Type of Inspection (activity code) AFA
20. Event Number 5211791
21. Primary or Mill

22. Signature James E

23. AR Number 23150

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87 2. Time (24 Hr Clock) 0750 3. Citation/Order Number 2844486

4 Served To James T. Jensen - Counsel for EMC
Dave Lauriski - Dir. of Safety UP&L

5. Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.

6. Mine Wilberg

7. Mine ID 42-00080 (Contractor)

8 Condition or Practice

8a Written Notice (103g) ☐

The 150-horsepower Ingersoll-Rand Electric Air Compressor, Serial No. 110740U79379, Company No. 14-025, located in 1st North, No. 4 Entry, crosscut 36, was not examined at least weekly by a qualified person to assure safe operating condition.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation A. Health ☐ Safety ■ Other ☐ B. Section of Act — C. Part/Section of Title 30 CFR 75.512

Section II—Inspector's Evaluation

10. Gravity:

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☒

B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C. Significant and Substantial (See Reverse): Yes ☒ No ☐

D. Number of Persons Affected 28

11. Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☐ E. Reckless Disregard ☒

12. Type of Action 104-d-1,

13. Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐

14. Initial Action A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number 2844485 F. Dated Mo 03 Da 24 Yr 87

15 Area or Equipment

Air compressor located in 1st North, No. 4 Entry, crosscut 36

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

Air compressor located in 1st North, No. 4 Entry, crosscut 36 removed during the mine investigation of the fire area.

18 Terminated A. Date Mo 08 Da 01 Yr 86 B. Time (24 Hr. Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA 20. Event Number 5211791 21 Primary or Mill

22 Signature James E. Kirk

23 AR Number 23150

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87 | 2 Time (24 Hr Clock) 0750 | 3 Citation/Order Number 2844815

4 Served To James T. Jensen-Counsel for EMC
Dave Lauriski-Dir. of Safety UP&L

5 Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Di

6 Mine Wilberg

7 Mine ID 4 2 – 0 0 0 8 0 (Contractor)

8 Condition or Practice | 8a Written Notice (103o) ☐

Two separate and distinct escapeways were not maintained in a safe condition in the 1st North, 5th Right longwall panel in that; 1) Six 8-inch by 16-inch blocks were missing at bottom of the stopping in crosscut 16, 2) A 4-inch by 7-inch hole with a horizontal opening measuring 1-inch high by 3 feet long extending from it was at the top of the stopping at crosscut 18, and 3) A 1-foot by 1-1/2 foot hole with a cable through it was in the stopping at crosscut 20.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation A. Health ☐ Safety ☒ Other ☐ | B Section of Act – | C Part/Section of Title 30 CFR 75.1704

Section II—Inspector's Evaluation

10 Gravity

A Injury or Illness (has) (is) No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☒

B Injury or Illness could reasonably be expected to be No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C Significant and Substantial (See Reverse) Yes ☒ No ☐ | D Number of Persons Affected 28

11 Negligence (check one) A None ☐ B Low ☐ C Moderate ☐ D High ☒ E Reckless Disregard ☐

12 Type of Action 104 – d – 1 | 13 Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐

14 Initial Action A Citation ☒ B Order ☐ C Safeguard ☐ D Written Notice ☐ | E Citation/Order Number 2844485 | F Dated Mo 03 Da 24 Yr 87

15 Area or Equipment

5th Right, 1st North

16 Termination Due A Date Mo Da Yr | B Time (24 Hr Clock)

Section III—Termination Action

17 Action to Terminate

Stoppings no longer necessary. Area is part of Bleeder System.

18 Terminated A Date Mo 02 Da 21 Yr 86 | B Time (24 Hr Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA | 20 Event Number 5211791 | 21 Primary or Mill

22 Signature | 23 AR Number 21913

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Date

1 Date: Mo 03 Da 24 Yr 87
2 Time (24 Hr Clock): 0750
3 Citation/Order Number: 2844488
4 Served To: James T. Jensen - Counsel for EMC
Dave Lauriski - Dir. of Safety, UP&L
5 Operator: Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.
6 Mine: Wilberg
7 Mine ID: 42 – 00080 (Contractor)
8 Condition or Practice
8a Written Notice (103g) ☐

Emery Mining Corporation's program of instruction of all miners in the location and use of fire fighting equipment, location of escapeways, exits, and routes of travel to the surface, and proper evacuation procedures to be followed in event of an emergency was not submitted to the District Manager for approval.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9. Violation: A. Health ☐ Safety ☒ Other ☐
B. Section of Act: –
C. Part/Section of Title 30 CFR: 75.1101-23a

Section II—Inspector's Evaluation

10. Gravity:
A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☒
B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒
C. Significant and Substantial (See Reverse): Yes ☒ No ☐
D. Number of Persons Affected: 080
11. Negligence (check one): A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐
12. Type of Action: 104-d-1, – –
13. Type of Issuance (check one): Citation ☐ Order ☒ Safeguard ☐
14. Initial Action: A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐
E. Citation/Order Number: 2844485
F. Dated: Mo 03 Da 24 Yr 87
15. Area or Equipment

The whole mine is affected.

16 Termination Due: A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

Plan submitted and approved on July 26, 1985

18 Terminated: A. Date Mo 07 Da 26 Yr 85 B. Time (24 Hr Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code): AFA
20. Event Number: 5211791
21 Primary or Mill
22 Signature
23 AR Number: 21513

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2. Time (24 Hr Clock) 0750
3. Citation/Order Number 2844489

4 Served To James T. Jensen - Counsel for EMC
Dave Lauriski - Dir. of Safety UP&L

5. Operator Emery Mining Corp. and its successor-in-interest Utah Power and Light Co., Mining Di

6 Mine Wilberg

7 Mine ID 42 – 00 080 (Contractor)

8 Condition or Practice

8a Written Notice (103g) ☐

A map showing the designated escapeways from the working section to the main escape system was not posted in the 1st North, 5th Right section.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9. Violation A. Health ☐ Safety ☒ Other ☐ B. Section of Act – C. Part/Section of Title 30 CFR 75.1704-2d

Section II—Inspector's Evaluation

10. Gravity:

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☒

B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C. Significant and Substantial (See Reverse): Yes ☒ No ☐

D. Number of Persons Affected 28

11. Negligence (check one)
A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐

12. Type of Action 104 – d – 1,

13. Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐

14. Initial Action A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐
E. Citation/Order Number 2844485
F. Dated Mo 03 Da 24 Yr 87

15 Area or Equipment

1st North, 5th Right Longwall active working section.

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

Area recovered during investigation. No longer active. Area is now part of the bleeder system as of February 21, 1986.

18 Terminated A. Date Mo 02 Da 21 Yr 86 B. Time (24 Hr Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA
20. Event Number 5211791
21 Primary or Mill

22 Signature

23 AR Number 21913

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87 | 2. Time (24 Hr Clock) 0750 | 3 Citation/Order Number 2844490

4 Served To James T. Jensen - Counsel for EMC
Dave Lauriski - Dir. of Safety UP&L

5 Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.

6 Mine Wilberg | 7 Mine ID 42 – 00080 | (Contractor)

8 Condition or Practice | 8a Written Notice (103: ☐

The investigation of the fire area revealed that Emery Mining Corporation failed to train miners who were on the 5th Right Longwall Section on December 19, 1984, in the location and use of self-rescue devices in that:

1. Five of the victims did not obtain and use a self-contained self-rescuer (SCSR) device even though they had knowledge of a fire and traveled near locations where a total of 49 SCSRs were stored. Four of these victims were senior mine management officials.
2. Six of the victims did not properly start their SCSRs in that they failed to pull the lid and lanyard to activate the chlorate candle immediately upon donning their units.
3. Three victims failed to use a self-rescue device in their possession when they had tice to use it in that (a) one victim wore an activated SCSR for some distance without using it, (b) one failed to use his filter self-rescuer (FSR) before activating an SCSR in smoke, and (c) one victim failed to use his FSR while traveling in smoke.

See Continuation Form (MSHA Form 7000 3a ☒

9 Violation | A. Health ☐ Safety ☒ Other ☐ | B. Section of Act – | C. Part/Section of Title 30 CFR 75.1714-b

Section II—Inspector's Evaluation

10. Gravity

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☒

B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C. Significant and Substantial (See Reverse) Yes ☒ No ☐ | D. Number of Persons Affected 080

11. Negligence (check one)
A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E. Reckless Disregard ☐

12. Type of Action 104–a– , – – | 13. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐

14. Initial Action A. Citation ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ | E. Citation/Order Number | F. Dated Mo Da Yr

15. Area or Equipment

16. Termination Due A. Date Mo Da Yr | B. Time (24 Hr Clock)

Section III—Termination Action

17 Action to Terminate

Training upgraded to include hands on use and an evaluation indicated that miners were able to properly use the apparatus.

18 Terminated A. Date Mo 02 Da 24 Yr 87 | B. Time (24 Hr. Clock)

Section IV—Automated System Data

19. Type of Inspection (activity code) AFA | 20. Event Number 5211791 | 21 Primary or Mill

22 Signature | 23 AR Number 21913

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order
Continuation

U.S. Department of Labor
Mine Safety and Health Administration

Section I–Subsequent Action/Continuation Data

1. Subsequent Action ☐	1a. Continuation ☑	2. Dated (Original Issue)	Mo 03	Da 24	Yr 87	3. Citation/Order Number 2844490 - 01

4. Served To: James T. Jensen-Counsel for EMC
Dave Lauriski-Dir. of Safety UP&L

5. Operator: Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.

6. Mine: Wilberg

7. Mine ID: 42-00080- (Contractor)

Section II–Justification for Action

4. Overall, management officials and other miners failed to obtain and use SCSRs at the first indication of fire.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form ☐

Section III- Subsequent Action Taken

8. Extended To: A. Date Mo Da Yr B. Time (24 Hr. Clock) C. Vacated ☐ D. Terminated ☐ E. Modified ☐

Section IV–Inspection Data

9. Type of Inspection: AFA

10. Event Number: 5211791

11. Signature: Lawrence

AR Number: 21913

12. Date: Mo 03 Da 24 Yr 87

13. Time (24 Hr. Clock): 0750

MSHA Form 7000-3a, Mar 85 (revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87 2 Time (24 Hr Clock) 0750 3 Citation/Order Number 2844491

4 Served To James T. Jensen - Counsel for EMC
Dave Lauriski - Dir. of Safety UP&L

5 Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.

6 Mine Wilberg

7. Mine ID 4 2 — 0 0 0 8 0 (Contractor)

8 Condition or Practice

8a Written Notice (103g) ☐

The compressor station located at 1st North, No. 4 Entry, crosscut 36, was not housed in a fireproof structure or area. A 150-horsepower Ingersoll-Rand Air Compressor, Company No. 14-025, Serial No. 110740U79379, was found at this location during the underground investigation of the fire area.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation A. Health ☐ Safety ☒ Other ☐ B Section of Act — C Part/Section of Title 30 CFR 75.1105

Section II—Inspector's Evaluation

10. Gravity:

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☒

B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C. Significant and Substantial (See Reverse): Yes ☒ No ☐

D. Number of Persons Affected 2 8

11 Negligence (check one)

A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E. Reckless Disregard ☐

12. Type of Action 1 0 4 — a —

13. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐

14. Initial Action A. Citation ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number F. Dated Mo Da Yr

15. Area or Equipment

16. Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

Equipment removed during the investigation on or about August 1, 1986. Area no longer in service.

18. Terminated A. Date Mo 08 Da 01 Yr 86 B. Time (24 Hr Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) A F A 20. Event Number 5211791 21 Primary or Mill

22 Signature

23 AR Number 2191-3

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87

2. Time (24 Hr Clock) 0750

3 Citation/Order Number 2844492

4 Served To James T. Jensen - Counsel for EMC
Dave Lauriski - Dir. of Safety UP&L

5. Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div

6 Mine Wilberg

7. Mine ID 42 – 00080 (Contractor)

8 Condition or Practice

8a Written Notice (103c ☐

The unattended 150-horsepower Ingersoll-Rand Electric Air Compressor, Serial No. 110740U7937 Company No. 14-025, that contained combustible material and fluid and operated for more than 24 production shift hours in 1st North, No. 4 Entry, crosscut 36, was not provided with a fire suppression device.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine of December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation A Health ☐ Safety ☒ Other ☐ B. Section of Act – C. Part/Section of Title 30 CFR 75.1107-1a2

Section II—Inspector's Evaluation

10. Gravity

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☒

B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C. Significant and Substantial (See Reverse): Yes ☒ No ☐

D. Number of Persons Affected 28

11. Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E. Reckless Disregard ☐

12. Type of Action 104 – a – , – –

13. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐

14. Initial Action A. Citation ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number F. Dated Mo Da Yr

15. Area or Equipment

16. Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17. Action to Terminate

Equipment removed on or about August 1, 1986.

18. Terminated A. Date Mo 08 Da 01 Yr 86 B. Time (24 Hr. Clock)

Section IV—Automated System Data

19. Type of Inspection (activity code) A F A

20. Event Number 5211791

21. Primary or Mill

22. Signature James F. Kirk

23. AR Number 23150

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2. Time (24 Hr. Clock) 0750
3 Citation/Order Number 2844493

4 Served To James T. Jensen - Counsel for EMC
Dave Lauriski - Dir. of Safety UP&L

5 Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.

6 Mine Wilberg

7 Mine ID 42 - 00080 (Contractor)

8 Condition or Practice

8a. Written Notice (103g) ☐

The MSA Pager III mine telephone located at the 1st North, 5 Right belt drive, crosscut 34, No. 3 Entry, was not maintained in good operating condition at all times in that the page switch was found defective (remained open) and prevented the ability to page out from this telephone.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9. Violation A. Health ☐ Safety ☒ Other ☐ B. Section of Act — C. Part/Section of Title 30 CFR 75.1600-2e

Section II—Inspector's Evaluation

10. Gravity

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☒

B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C. Significant and Substantial (See Reverse): Yes ☒ No ☐

D. Number of Persons Affected 28

11 Negligence (check one)
A. None ☐ B. Low ☒ C. Moderate ☐ D. High ☐ E. Reckless Disregard ☐

12. Type of Action 104—a.

13. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐

14 Initial Action A. Citation ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number: F Dated Mo Da Yr

15 Area or Equipment

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

Equipment removed from the mine during the investigation on or about August 7, 1986.

18 Terminated A. Date Mo 08 Da 07 Yr 86 B. Time (24 Hr. Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA
20. Event Number 5211791
21 Primary or Mill

22 Signature James E. Kirk
23 AR Number 23150

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2 Time (24 Hr. Clock) 0750
3 Citation/Order Number 2844816

4 Served To James T. Jensen-Counsel for EMC
Dave Lauriski-Dir. of Safety UP&L

5 Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Di

6 Mine Wilberg

7 Mine ID 42-00080 (Contractor)

8 Condition or Practice

8a Written Notice (103g) ☐

Emery mining officials and employees (EMC) altered an accident related area without receiving persmission from a MSHA district or subdistrict manager and failed to prevent destruction of evidence when two of the three conveyor belt fire detection monitoring units (CBFDs) located at the Wilberg Mine bathhouse were removed by EMC and taken to another mine (DES-BEE-DOVE). During this removal, the CBFD master station which had monitored the 5th Right area was taken apart and altered. This was done when there was a tag on the units that stated "F.B.I. Don't take away any parts."

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation A Health ☐ Safety ☒ Other ☐
B Section of Act 103-(j)
C Part/Section of Title 30 CFR 50.12

Section II—Inspector's Evaluation

10. Gravity

A. Injury or Illness (has) (is) No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐

B. Injury or Illness could reasonably be expected to be No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C. Significant and Substantial (See Reverse) Yes ☒ No ☐

D. Number of Persons Affected 080

11 Negligence (check one)
A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☐ E. Reckless Disregard ☒

12. Type of Action 104-A-,

13. Type of Issuance (check one)
Citation ☒ Order ☐ Safeguard ☐

14 Initial Action
A. Citation ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐
E. Citation/Order Number
F. Dated Mo Da Yr

15 Area or Equipment

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

Equipment provided to MSHA for testing on March 5, 1985.

18 Terminated A. Date Mo 03 Da 05 Yr 85 B. Time (24 Hr. Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA
20 Event Number 5211791
21 Primary or Mill

22 Signature Lawrence

23 AR Number 21913

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2 Time (24 Hr Clock) 0750
3 Citation/Order Number 2844822

4 Served To James T. Jensen-Counsel for EMC
David Lauriski-Dir. of Safety UP&L

5 Operator Emery Mining Corporation & its successor-in-interest Utah Power & Light Co. Mining Div.

6 Mine Wilberg Mine

7 Mine ID 42-00080 (Contractor)

8 Condition or Practice

8a. Written Notice (103g) ☐

The intake aircourse and belt entry were not separated by properly maintained and constructed stoppings along the 1st North, 5th Right longwall panel as required by the approved ventilation system, methane and dust control plan in that: 1) Six 8 inch by 16 inch blocks were missing at bottom of stopping at crosscut 16, 2) A 4 inch by 7 inch hole with a horizontal opening measuring 1 inch high by 3 feet long extending from it was found at the top of the stopping at crosscut 18, and 3) A 1 foot by 1 1/2 foot hole with a cable through it was in the stopping at crosscut 20.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation A Health ☐ Safety ☒ Other ☐ B Section of Act - C Part/Section of Title 30 CFR 75.316

Section II—Inspector's Evaluation

10 Gravity

A. Injury or Illness (has) (is) No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☒ Occurred ☐

B. Injury or Illness could reasonably be expected to be No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C. Significant and Substantial (See Reverse) Yes ☒ No ☐

D. Number of Persons Affected 013

11 Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐

12 Type of Action 104-d-1, - -

13 Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐

14 Initial Action A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number 2844485 F. Dated Mo 03 Da 24 Yr 87

15 Area or Equipment

1st North, 5th Right longwall panel stoppings.

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

Stoppings no longer necessary. Area is part of the bleeder system.

18 Terminated A. Date Mo 02 Da 21 Yr 86 B. Time (24 Hr Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA

20 Event Number 5211791

21 Primary or Mill

22 Signature Laurence Jensen

23 AR Number 21913

ine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

ction I–Violation Data

Date Mo Da Yr: 03 24 87	2. Time (24 Hr. Clock): 0750		3. Citation/Order Number	2844795
Served To: James T. Jensen-Counsel for EMC David Lauriski-Dir. of Safety UP&L		5. Operator: Emery Mining Corporation & its succes… in-interest Utah Power & Light Co. Mining		
Mine: WILBERG MINE		7. Mine ID: 42–00080		(Contractor)

Condition or Practice

8a. Written Notice (103g)

The power circuit, from the transformer serving power to the 480 volt three phase mi… controls dual 200 horsepower motor starter located at 1st North, No. 4 entry, 34 cros… was not provided protection against grounded phase. The control circuit conductor extending from the No. 1 terminal of the grounded-phase relay normally open contact terminal was disconnected, rendering the grounded phase protective circuit inoperative.

This condition or practice was found during the investigation of the multiple fatal fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a)

Violation	A. Health ☐ Safety ☒ Other ☐	B. Section of Act: –	C. Part/Section of Title 30 CFR: 75.900

ction II–Inspector's Evaluation

Gravity

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐

B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal

C. Significant and Substantial (See Reverse): Yes ☒ No ☐

D. Number of Persons Affected: 1

Negligence (check one): A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☐ E. Reckless Disregard ☒

Type of Action: 104–d–1

13. Type of Issuance (check one): Citation ☐ Order ☒ Safeguard ☐

Initial Action: A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐

E. Citation/Order Number: 2844485

F. Dated Mo Da: 03 24 8

Area or Equipment

In 1st North, No. 4 Entry, from crossecut 35 to crosscut 34 (cable). Belt drive mot… located in 1st North, No. 4 Entry, crosscut 34.

Termination Due: A. Date Mo Da Yr B. Time (24 Hr. Clock)

ction III–Termination Action

Action to Terminate

Removed from the Mine during the investigation on or about July 30, 1986.

Terminated: A. Date Mo Da Yr: 07 30 86 B. Time (24 Hr. Clock)

ction IV–Automated System Data

Type of Inspection (activity code): AFA

20. Event Number: 5211791

21. Primary or Mill

Signature: James E. Kirk

23. AR Number: 2315

…A Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87

2 Time (24 Hr. Clock) 0750

3 Citation/Order Number 2844796

4 Served To James T. Jensen—Counsel for EMC
David Lauriski-Dir. of Safety UP&L

5 Operator Emery Mining Corporation & its successor-in-interest Utah Power & Light Co. Mining Div.

6 Mine WILBERG MINE

7 Mine ID 42–00080 (Contractor)

8 Condition or Practice

8a Written Notice (103g) ☐

The MSA model 700 foam generator system utilized in the 1st North, 5th Right belt drive was not capable of producing and delivering foam to fully envelop the belt drive, belt take-up, electrical controls, gear reducing unit and conveyor belt over a distance of 50 feet within 5 minutes.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation A. Health ☐ Safety ☒ Other ☐

B. Section of Act —

C. Part/Section of Title 30 CFR 75.1101-5(b)(1)

Section II—Inspector's Evaluation

10 Gravity

A. Injury or Illness (has) (is) No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐

B. Injury or Illness could reasonably be expected to be No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C. Significant and Substantial (See Reverse) Yes ☒ No ☐

D. Number of Persons Affected 13

11 Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐

12 Type of Action 104-d-1,

13 Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐

14 Initial Action A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐

E. Citation/Order Number 2844485

F. Dated Mo 03 Da 24 Yr 87

15 Area or Equipment

1st North, 5th Right Belt Drive

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

Area sealed on or about December 23, 1984. Most equipment at belt drive under roof-fall caused by fire.

18 Terminated A. Date Mo 12 Da 23 Yr 84 B. Time (24 Hr. Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA

20 Event Number 5211791

21 Primary or Mill

22 Signature

23 AR Number 21913

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2 Time (24 Hr Clock) 0750
3 Citation/Order Number 2844798

4 Served To James T. Jensen-Counsel for EMC
David Lauriski-Dir. of Safety UP&L

5. Operator Emery Mining Corporation & its successor in-interest Utah Power & Light Co. Mining Div.

6 Mine WILBERG MINE

7. Mine ID 42-00080 (Contractor)

8 Condition or Practice

8a. Written Notice (103g) ☐

The MSA model 700 foam generator system did not have a water and foam flow rate of 25 minutes as required. This system only had a flow rate of 20 minutes.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a): ☐

9. Violation A. Health ☐ Safety ☒ Other ☐ B. Section of Act — C. Part/Section of Title 30 CFR 75.1101-5(d)

Section II—Inspector's Evaluation

10. Gravity

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐

B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C. Significant and Substantial (See Reverse): Yes ☒ No ☐

D. Number of Persons Affected 013

11. Negligence (check one)
A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐

12. Type of Action 104-d-1

13. Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐

14. Initial Action A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number 2844485 F. Dated Mo 03 Da 24 Yr 87

15 Area or Equipment

1st North, 5 Right belt drive.

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

Area sealed on or about December 23, 1984.

18 Terminated A. Date Mo 12 Da 23 Yr 84 B. Time (24 Hr. Clock)

Section IV—Automated System Data

19. Type of Inspection (activity code) AFA
20. Event Number 5211791
21 Primary or Mill

22 Signature

23 AR Number 21913

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2 Time (24 Hr Clock) 0750
3 Citation/Order Number 2844825
4 Served To James T. Jensen-Counsel for EMC
Dave Lauriski-Dir. of Safety UP&L
5 Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div
6 Mine Wilberg
7 Mine ID 42-00080 (Contractor)
8 Condition or Practice
8a Written Notice (103g) ☐

A disconnecting device was not installed in conjunction with the 100 ampere circuit breaker which provided protection for the 480 volt three phase Long-airdox Super 500 H D belt takeup, located in 1st North, 5th Right belt entry, to provide visual evidence that the power is disconnected.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation A Health ☐ Safety ☒ Other ☐
B Section of Act —
C Part/Section of Title 30 CFR 75.903

Section II—Inspector's Evaluation

10 Gravity
A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐
B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒
C. Significant and Substantial (See Reverse): Yes ☒ No ☐
D. Number of Persons Affected 001

11 Negligence (check one)
A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐

12. Type of Action 104-d-1,
13. Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐

14. Initial Action A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐
E. Citation/Order Number 2844485
F. Dated Mo 03 Da 24 Yr 87

15 Area or Equipment
Super 500 located at 1st North, 5th Right belt entry.

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate
Circuit breaker removed from the mine during the investigation on or about August 8, 1986. Super 500 equipment in sealed area.

18 Terminated A. Date Mo 08 Da 08 Yr 86 B. Time (24 Hr Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA
20 Event Number 5211791
21 Primary or Mill

22 Signature James F. Kirk
23 AR Number 23150

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date: Mo 03 Da 24 Yr 87

2 Time (24 Hr Clock): 0750

3 Citation/Order Number: 2844823

4 Served To: James T. Jensen-Counsel for EMC
Dave Lauriski-Dir. of Safety UP&L

5. Operator: Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Di

6 Mine: Wilberg

7. Mine ID: 42 – 00080 (Contractor)

8 Condition or Practice — 8a Written Notice (103g) ☐

Automatic fire sensors were not installed for a distance of approximately 470 feet, extending from crosscut 15 to crosscut 19 along the 1st North, 5th Right conveyor-belt entry.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation: A. Health ☐ Safety ☒ Other ☐ — B. Section of Act: – — C. Part/Section of Title 30 CFR: 75.1103-4(a)(1)

Section II—Inspector's Evaluation

10. Gravity

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐

B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C. Significant and Substantial (See Reverse): Yes ☒ No ☐

D. Number of Persons Affected: 13

11 Negligence (check one): A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐

12. Type of Action: 104 – d – 1 – –

13. Type of Issuance (check one): Citation ☐ Order ☒ Safeguard ☐

14. Initial Action: A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐

E. Citation/Order Number: 2844485

F. Dated: Mo 03 Da 24 Yr 87

15 Area or Equipment

5th Right-belt entry.

16 Termination Due: A. Date Mo Da Yr — B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

Conveyor belt partfally dismantled. Section no longer active since December 19, 1984.

18 Terminated: A. Date Mo 12 Da 19 Yr 84 — B. Time (24 Hr. Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code): AFA

20. Event Number: 5211791

21 Primary or Mill

22 Signature: Lawrence Jansen

23 AR Number: 21913

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2. Time (24 Hr Clock) 0750
3. Citation/Order Number 2844813

4. Served To James T. Jensen-Counsel for EMC
Dave Lauriski-Dir. of Safety UP&L

5. Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.

6 Mine Wilberg

7 Mine ID 42 – 00080 (Contractor)

8 Condition or Practice

8a Written Notice (103g) ☐

The operator failed to submit a program to insure that any person entering the underground area of the mine does not carry smoking materials, matches, or lighters, to the district manager for approval.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation A. Health ☐ Safety ☒ Other ☐ B. Section of Act – C. Part/Section of Title 30 CFR 75.1702

Section II—Inspector's Evaluation

10. Gravity

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☒ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐

B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☒ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☐

C. Significant and Substantial (See Reverse): Yes ☐ No ☒

D. Number of Persons Affected 80

11 Negligence (check one)

A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐

12. Type of Action 104 – d – 1, – –

13. Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐

14. Initial Action

A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number 2844485 F. Dated Mo 03 Da 24 Yr 87

15 Area or Equipment

The entire mine.

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate A program was submitted To The MSHA District Manager And Approved

18 Terminated A. Date Mo 03 Da 24 Yr 87 B. Time (24 Hr Clock) 0802

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA

20 Event Number 5211791

21 Primary or Mill

22 Signature

23 AR Number 21513

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2. Time (24 Hr Clock) 0750
3. Citation/Order Number 2844826
4 Served To James T. Jensen-Counsel for EMC
Dave Lauriski-Dir. of Safety UP&L
5. Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining
6 Mine Wilberg
7. Mine ID 42-00080
(Contractor)
8 Condition or Practice
8a Written Notice (103g) ☐

The intake escapeway (diesel roadway) for the 1st North, 5th Right longwall working section was not located to follow the safest, direct practical route to the nearest mine opening suitable for the safe evacuation of miners in that an overcast was not provided at the mouth of 5 Right to allow the escapeway to directly connect to the 1st North main intake.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation A. Health ☐ Safety ☒ Other ☐
B. Section of Act
C. Part/Section of Title 30 CFR 75.1704-2 (a)

Section II—Inspector's Evaluation

10 Gravity
A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☒ Occurred ☐
B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒
C. Significant and Substantial (See Reverse): Yes ☒ No ☐
D. Number of Persons Affected 0 1 [illegible]
11 Negligence (check one)
A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E. Reckless Disregard ☐
12 Type of Action 104-a-9
13. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐
14 Initial Action
A. Citation ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐
E. Citation/Order Number
F. Dated Mo Da Yr
15 Area or Equipment
16 Termination Due A. Date Mo Da Yr B. Time (24 Hr Clock)

Section III—Termination Action

17 Action to Terminate

5 Right area no longer operating. Area is now part of the bleeder system.

18 Terminated A. Date Mo 02 Da 21 Yr 86 B. Time (24 Hr Clock)

Section IV—Automated System Data

19. Type of Inspection (activity code) AFA
20. Event Number 5211791
21 Primary or Mill
22 Signature
23 AR Number 21915

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2 Time (24 Hr Clock) 0750
3 Citation/Order Number 2844811

4 Served To James T. Jensen-Counsel for EMC
David Lauriski-Dir. of Safety & UP&L

5. Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div

6 Mine Wilberg

7 Mine ID 4 2 – 0 0 0 8 0 (Contractor)

8 Condition or Practice

8a Written Notice (103g) ☐

The CBFD Master Monitor station located in the bathhouse was not maintained in safe operating condition in that testing and examination conducted by MSHA's Technical Support Group revealed that this station was incapable of indicating a belt fire alarm or system trouble alarm if primary power were lost or switchedoff because the backup battery was not functional in the master station and the backup battery in the remote station at 5th Right belt drive was not connected before or during the fire.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9. Violation A Health ☐ Safety ☒ Other ☐
B Section of Act
C Part/Section of Title 30 CFR 75.1103-4e

Section II—Inspector's Evaluation

10. Gravity

A. Injury or Illness (has) (is) No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐

B. Injury or Illness could reasonably be expected to be No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C. Significant and Substantial (See Reverse) Yes ☒ No ☐

D. Number of Persons Affected 080

11. Negligence (check one)
A None ☐ B Low ☐ C Moderate ☐ D High ☒ E Reckless Disregard ☐

12. Type of Action 104 – a – 9 – –

13. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐

14. Initial Action A Citation ☐ B Order ☐ C Safeguard ☐ D Written Notice ☐
E. Citation/Order Number
F Dated Mo Da Yr

15 Area or Equipment

16 Termination Due A Date Mo Da Yr B Time (24 Hr Clock)

Section III—Termination Action

17 Action to Terminate

UNITS removed from service during the fire recovery and investigation period on or about February 7, 1985.

18 Terminated A Date Mo 02 Da 07 Yr 85 B Time (24 Hr Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) A F A
20 Event Number 5211791
21 Primary or Mill

22 Signature

23 AR Number 21913

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2. Time (24 Hr. Clock) 0750
3. Citation/Order Number 2844750
4. Served To James T. Jensen-Counsel for EMC
David Lauriski-Dir. of Safety UP&L
5. Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.
6. Mine Wilberg
7. Mine ID 42 — 00080 (Contractor)
8. Condition or Practice
8a Written Notice (103g) ☐

The 1st North, 5th Right longwall control linkage to the "stage loader" and "heater circuit breaker" (CB) were not maintained in a safe operating condition in that the circuit breaker linkages were found inoperative.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26,1986.

9. Violation A. Health ☐ Safety ☒ Other ☐ B. Section of Act — C. Part/Section of Title 30 CFR 75.1725
See Continuation Form (MSHA Form 7000-3a) ☐

Section II—Inspector's Evaluation

10. Gravity
A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐
B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☒ Permanently Disabling ☐ Fatal ☐
C. Significant and Substantial (See Reverse): Yes ☒ No ☐
D. Number of Persons Affected 001
11. Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E. Reckless Disregard ☐
12. Type of Action 104 — a — 9 — —
13. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐
14. Initial Action A. Citation ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number F. Dated Mo Da Yr
15. Area or Equipment
16. Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17. Action to Terminate
Equipment no longer in service.

18. Terminated A. Date Mo 02 Da 21 Yr 86 B. Time (24 Hr. Clock)

Section IV—Automated System Data

19. Type of Inspection (activity code) AFA
20. Event Number 5211791
21. Primary or Mill
22. Signature James E Kirk
23. AR Number 23150

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2 Time (24 Hr Clock) 0750
3 Citation/Order Number 2844751

4 Served To James T. Jensen-Counsel for EMC
David Lauriski-Dir. of Safety UP&L

5 Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.

6 Mine Wilberg

7 Mine ID 42-00080 (Contractor)

8 Condition or Practice

8a Written Notice (103g) ☐

Overload protection was not provided for the stage loader Cat Drive Motor of the 1st North, 5th Right longwall in that a wire was connected in parallel with the normally closed overload relay contacts. This miswiring rendered the overload protection inoperative.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation A. Health ☐ Safety ☒ Other ☐ B. Section of Act — C. Part/Section of Title 30 CFR 75.518

Section II—Inspector's Evaluation

10. Gravity

A. Injury or Illness (has) (is) No Likelihood ☐ Unlikely ☒ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐

B. Injury or Illness could reasonably be expected to be No Lost Workdays ☐ Lost Workdays or Restricted Duty ☒ Permanently Disabling ☐ Fatal ☐

C. Significant and Substantial (See Reverse): Yes ☐ No ☒

D. Number of Persons Affected 001

11. Negligence (check one)

A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E. Reckless Disregard ☐

12. Type of Action 104 — a — ,

13. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐

14. Initial Action A. Citation ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number F. Dated Mo Da Yr

15 Area or Equipment

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

Equipment no longer in service.

18 Terminated A. Date Mo 02 Da 21 Yr 86 B. Time (24 Hr. Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA
20. Event Number 5211791
21 Primary or Mill

22 Signature James E. Kirk

23 AR Number 23156

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2. Time (24 Hr. Clock) 0750
3. Citation/Order Number 2844752
4 Served To James T. Jensen-Counsel for EMC
David Lauriski-Dir. of Safety UP&L
5 Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.
6 Mine Wilberg
7. Mine ID 42-00080 (Contractor)
8 Condition or Practice
8a. Written Notice (103g) ☐

The permanent splice that connected the No. 2/0 AWG, 3 conductor Type G-GC length of cable to the No. 2/0, 4 Conductor, Type W, length of cable of the Joy Single Boom Drill (Serial #4345, Company #04-035) located in 1st North, 5th Right, No. 1 Entry, No. 7 Crosscut, was not effectively insulated in that the crimp connection of the grounding conductor had cut into the black phase conductor insulation. Evidence of burning inside the splice between the grounding conductor and the black phase conductor was present, the splice was located approximately 111 feet from the reel splice of the Joy Drill cable.

This condition or practice was found during the investigation of the mutliple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐
9. Violation A. Health ☐ Safety ☒ Other ☐
B. Section of Act —
C. Part/Section of Title 30 CFR 75.604(b)

Section II—Inspector's Evaluation —
10 Gravity:
A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐
B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒
C. Significant and Substantial (See Reverse): Yes ☒ No ☐
D Number of Persons Affected 01
11. Negligence (check one)
A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E Reckless Disregard ☐
12. Type of Action 104—a—9
13. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐
14. Initial Action
A. Citation ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number
F. Dated Mo Da Yr
15 Area or Equipment

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action
17 Action to Terminate
Equipment removed from mine on or about 11-14-85

18 Terminated A. Date Mo 11 Da 14 Yr 85 B. Time (24 Hr. Clock)

Section IV—Automated System Data
19 Type of Inspection (activity code) AFA
20. Event Number 5211791
21 Primary or Mill

22 Signature James E. Kirk
23 AR Number 23150

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1. Date Mo 03 Da 24 Yr 87
2. Time (24 Hr. Clock) 0750
3. Citation/Order Number 2844753
4. Served To James T. Jensen-Counsel for EMC
David Lauriski-Dir. of Safety UP&L
5. Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.
6. Mine Wilberg
7. Mine ID 42-00080 (Contractor)
8. Condition or Practice
8a. Written Notice (103g) ☐

The disconnecting device for the trailing cable that extended from the No. 13 breaker outlet on the 1st North, 5th Right longwall section transformer to the Quartz Kitchen lighting fixture was not plainly marked or identified.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a ☐

9. Violation A. Health ☐ Safety ☒ Other ☐ B. Section of Act — C. Part/Section of Title 30 CFR 75.601

Section II—Inspector's Evaluation

10. Gravity:
A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐
B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒
C. Significant and Substantial (See Reverse): Yes ☒ No ☐
D. Number of Persons Affected 01
11. Negligence (check one)
A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E. Reckless Disregard ☐
12. Type of Action 104-a-9
13. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐
14. Initial Action A. Citation ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number F. Dated Mo Da Yr
15. Area or Equipment
16. Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17. Action to Terminate

Equipment no longer in service. Section transformer removed from the mine on or about November 8, 1985.

18. Terminated A. Date Mo 11 Da 08 Yr 85 B. Time (24 Hr. Clock)

Section IV—Automated System Data

19. Type of Inspection (activity code) AFA
20. Event Number 5211791
21. Primary or Mill
22. Signature James E. Kuit
23. AR Number 23150

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1. Date: Mo 03 Da 24 Yr 87
2. Time (24 Hr. Clock): 0750
3. Citation/Order Number: 2844754
4. Served To: James T. Jensen-Counsel for EMC
David Lauriski-Dir. of Safety UP&L
5. Operator: Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.
6. Mine: Wilberg
7. Mine ID: 42-00080 (Contractor)
8. Condition or Practice
8a. Written Notice (103:) ☐

The No. 2 AWG Type W power cable that supplied 480 volt three phase power to the 150 horsepower Ingersoll-Rand Electric Air Compressor, Company No. 14-025, located in 1st North, No. 4 Entry, 36 Crosscut, was not sufficient in size and did not have adequate current carrying capacity as PE Section 430-22 of the National Electric Code which specifies that conductors supplying a single motor shall have an ampacity not less than 125% of the full load current rating of the motor.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9. Violation: A. Health ☐ Safety ☒ Other ☐ B. Section of Act: – C. Part/Section of Title 30 CFR: 75.513-1

Section II—Inspector's Evaluation

10. Gravity:
A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☒ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐
B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☒ Permanently Disabling ☐ Fatal ☐
C. Significant and Substantial (See Reverse): Yes ☐ No ☒
D. Number of Persons Affected: 001
11. Negligence (check one): A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐
12. Type of Action: 104 – a – , – –
13. Type of Issuance (check one): Citation ☒ Order ☐ Safeguard ☐
14. Initial Action: A. Citation ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number F. Dated Mo Da Yr
15. Area or Equipment
16. Termination Due: A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17. Action to Terminate

Equipment removed during investigation on or about July 30, 1986. No longer in service.

18. Terminated: A. Date Mo 07 Da 30 Yr 86 B. Time (24 Hr. Clock)

Section IV—Automated System Data

19. Type of Inspection (activity code): AFA
20. Event Number: 5211791
21. Primary or Mill
22. Signature: James E. Kirk
23. AR Number: 23150

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2 Time (24 Hr Clock) 0750
3 Citation/Order Number 2844760

4 Served To James T. Jensen-Counsel for EMC
David Lauriski-Dir. of Safety UP&L

5 Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.

6 Mine Wilberg

7. Mine ID 42 – 00080 (Contractor)

8 Condition or Practice

8a Written Notice (103g) ☐

The 1st North, 5th Right longwall (X/P 2G 3469A) was not maintained in permissible condition in that a # 1/0 AWG three conductor, Type G-GC, 2 KV power cable was installed to supply the 995 (or 950) volt, 150 horsepower three phase stage loader motor. The documentation of the 5th Right longwall approval specifies a No. 1 AWG three conductor power cable to supply power to the stage loader motor.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation A. Health ☐ Safety ☒ Other ☐
B. Section of Act —
C. Part/Section of Title 30 CFR 75.503

Section II—Inspector's Evaluation

10. Gravity

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☒ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐

B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☒ Permanently Disabling ☐ Fatal ☐

C. Significant and Substantial (See Reverse): Yes ☐ No ☒

D. Number of Persons Affected 001

11. Negligence (check one)

A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E. Reckless Disregard ☐

12. Type of Action 104 – a – 9 – –

13. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐

14 Initial Action A. Citation ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐
E. Citation/Order Number
F. Dated Mo Da Yr

15 Area or Equipment

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

Equipment no longer in service as of December 19, 1984. Equipment removed on or about November 14, 1985.

18 Terminated A. Date Mo 11 Da 14 Yr 84 B. Time (24 Hr. Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA
20. Event Number 5211791
21 Primary or Mill

22 Signature James E. Kirk

23 AR Number 23150

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo Da Yr 03 24 87 2 Time (24 Hr Clock) 0750 3 Citation/Order Number 2844800

4 Served To James T. Jensen-Counsel for EMC
David Lauriski-Dir. of Safety UP&L

5 Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.

6 Mine Wilberg

7 Mine ID 42 — 00080 (Contractor)

8 Condition or Practice 8a Written Notice (103g) ☐

The #4/0 AWG G-GC, three conductor cable that supplied 480 volt three phase power to the mining controls dual 200 horsepower motor starter (Model No. D-23TT2-4803-582) that was located in 1st North, No. 4 Entry, 34 Crosscut, was not sufficient in size and did not have adequate current carrying capacity as per section 430-24 of the National Electric Code.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

9 Violation A. Health ☐ Safety ☒ Other ☐ B. Section of Act — C. Part/Section of Title 30 CFR 75.513 See Continuation Form (MSHA Form 7000-3a) ☐

Section II—Inspector's Evaluation

10 Gravity

A. Injury or illness (has) (is): No Likelihood ☐ Unlikely ☒ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐

B. Injury or illness could reasonably be expected to be: No Lost Workdays ☒ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☐

C. Significant and Substantial (See Reverse) Yes ☐ No ☒ D. Number of Persons Affected 001

11 Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐

12 Type of Action 104 — d — 19 — —

13 Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐

14 Initial Action A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number 2844685 F. Dated Mo Da Yr 03 24 87

15 Area or Equipment

Cable from the transformer to motor starter, 1st North, No. 4 Entry, from 35 Crosscut to 34 Crosscut.

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr Clock)

Section III—Termination Action

17 Action to Terminate

Equipment removed from service (removed from mine) on or about August 8, 1986.

18 Terminated A. Date Mo Da Yr 08 08 86 B. Time (24 Hr Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA 20 Event Number 5211791 21 Primary or Mill

22 Signature James E. Kirk 23 AR Number 23156

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 57

2 Time (24 Hr Clock) 0750

3 Citation/Order Number 2844801

4 Served To James T. Jensen-Counsel for EMC
David Lauriski-Dir. of Safety UP&L

5 Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.

6 Mine Wilberg

7 Mine ID 42 – 00080 (Contractor)

8 Condition or Practice

8a Written Notice (103g) ☐

The disconnecting devices used to disconnect the two 995 volt three phase trailing cables to 1st North, 5th Right longwall starter assembly enclosures were not properly identified in that "input No. 1" (XP 2910-12) was identified as "Main Power No. 2" and "Input No. 2" (XP 2910-11) was identified as "Main Power No. 1."

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation A Health ☐ Safety ☒ Other ☐ B Section of Act – C Part/Section of Title 30 CFR 75.601

Section II—Inspector's Evaluation

10 Gravity:

A. Injury or Illness (has) (is) No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☒ Occurred ☐

B. Injury or Illness could reasonably be expected to be No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C. Significant and Substantial (See Reverse) Yes ☒ No ☐

D. Number of Persons Affected 001

11 Negligence (check one)
A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E. Reckless Disregard ☐

12. Type of Action 104 – a – , – –

13. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐

14 Initial Action A. Citation ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number F. Dated Mo Da Yr

15 Area or Equipment

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

Equipment removed from service on or about February 21, 1986.

18 Terminated A. Date Mo 02 Da 21 Yr 86 B. Time (24 Hr Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA

20. Event Number 5211791

21 Primary or Mill

22 Signature James E Kirk

23 AR Number 23150

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2. Time (24 Hr Clock) 0750
3. Citation/Order Number 2844803
4 Served To James T. Jensen, Counsel for EMC
David Lauriski-Dir. of Safety UP&L
5. Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.
6 Mine Wilberg
7. Mine ID 42-00080 (Contractor)

8 Condition or Practice
8a Written Notice (103g) ☐

The power circuits to each of the 200 horsepower 480 volt three phase belt drive motors located in the 1st North, No. 4 Entry, 34 Crosscut, were not provided protection against grounded phase in that the conductors from each of the secondary sides of their respective ground fault circuits were disconnected from their respective ground fault relay coil terminals. This rendered the grounded phase protective circuit inoperative.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation A Health ☐ Safety ☒ Other ☐
B. Section of Act —
C Part/Section of Title 30 CFR 75.900

Section II—Inspector's Evaluation

10 Gravity
A. Injury or Illness (has) (is) No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐
B. Injury or Illness could reasonably be expected to be No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒
C. Significant and Substantial (See Reverse): Yes ☒ No ☐
D. Number of Persons Affected 001

11 Negligence (check one)
A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐

12. Type of Action 104-d-1
13. Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐

14 Initial Action
A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐
E. Citation/Order Number 2844485
F. Dated Mo 03 Da 24 Yr 87

15 Area or Equipment
Power circuits to belt drive motors located in 1st North, No.4 Entry, 34 Crosscut.

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate
Equipment in sealed area. Area sealed December 23, 1984. Control panels from the motor starter removed during investigation on August 8, 1986.

18 Terminated A. Date Mo 08 Da 08 Yr 86 B. Time (24 Hr. Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA
20 Event Number 5211791
21 Primary or Mill

22 Signature James E. Kirk
23 AR Number 23150

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2 Time (24 Hr Clock) 0750
3 Citation/Order Number 2844807

4 Served To James T. Jensen-Counsel for EMC
Dave Lauriski-Dir. of Safety UP&L

5 Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining

6 Mine Wilberg

7 Mine ID 42-00080 (Contractor)

8 Condition or Practice

8a Written Notice (103g)

The Joy single boom roof bolting drill, Serial No. 4345, located in 1st North, 5th Right, 7th crosscut, was not examined at least weekly by a qualified person to assure safe operating condition.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a)

9 Violation A Health ☐ Safety ☒ Other ☐ B. Section of Act — C Part/Section of Title 30 CFR 75.512

Section II—Inspector's Evaluation

10. Gravity

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐

B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☒ Permanently Disabling ☐ Fatal ☐

C. Significant and Substantial (See Reverse): Yes ☒ No ☐

D. Number of Persons Affected 01

11. Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐

12. Type of Action 104-d-19

13. Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐

14 Initial Action A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number 2844585 F. Dated Mo 03 Da 24 Yr 8

15 Area or Equipment

Joy single boom drill located in 1st North, 5th Right, 7 crosscut.

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

Drill removed during investigation on November, 14, 1985.

18 Terminated A. Date Mo 11 Da 14 Yr 85 B. Time (24 Hr Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA

20. Event Number 5211791

21 Primary or Mill

22 Signature James E. Kirk

23 AR Number 2315C

MSHA Form 7000-3 Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2. Time (24 Hr Clock) 0750
3. Citation/Order Number 2844808
4 Served To James T. Jensen-Counsel for EMC
Dave Lauriski-Dir. of Safety UP&L
5. Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div
6 Mine Wilberg
7. Mine ID 42 — 00080 (Contractor)
8 Condition or Practice
8a Written Notice (103g) ☐

The Jeffery satellite pump, Serial No. 994048, located in 1st North, 5th Right, 5 crosscut was not examined at least weekly by a qualified person to assure safe operating condition.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9. Violation A. Health ☐ Safety ☒ Other ☐
B. Section of Act —
C. Part/Section of Title 30 CFR 75.512

Section II—Inspector's Evaluation

10. Gravity
A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐
B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☒ Permanently Disabling ☐ Fatal ☐
C. Significant and Substantial (See Reverse): Yes ☒ No ☐
D. Number of Persons Affected 013
11. Negligence (check one)
A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐
12. Type of Action 104 — d — 19 — —
13. Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐
14 Initial Action A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐
E. Citation/Order Number 2844485
F. Dated Mo 03 Da 24 Yr 87
15 Area or Equipment

Satellite pump located in 1st North, 5 Right, 5 crosscut.

16 Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

Removed from mine during recovery effort on or about November 12, 1985.

18. Terminated A. Date Mo 11 Da 12 Yr 85 B. Time (24 Hr. Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA
20 Event Number 5211791
21 Primary or Mill
22 Signature James E. Kirk
23 AR Number 23150

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87
2. Time (24 Hr Clock) 0750
3 Citation/Order Number 2844817
4 Served To James T. Jensen-Counsel for EMC
David Lauriski-Dir. of Safety UP&L
5 Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.
6 Mine Wilberg
7 Mine ID 42 — 00080 (Contractor)
8 Condition or Practice
8a Written Notice (103g) ☐

The Wilberg Mine Electrical Map (Drawing No. WU-217-E, Revision Date 9-10-84) was not updated to show the location of the 150 horsepower Ingersoll-Rand air compressor that was found in the 1st North No. 4 Entry, Crosscut 36.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9 Violation A Health ☐ Safety ☒ Other ☐ B. Section of Act — C Part/Section of Title 30 CFR 75.508

Section II—Inspector's Evaluation

10 Gravity
A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☒ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐
B Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☒ Permanently Disabling ☐ Fatal ☐
C. Significant and Substantial (See Reverse): Yes ☐ No ☒
D Number of Persons Affected 013
11. Negligence (check one)
A None ☐ B Low ☐ C Moderate ☒ D. High ☐ E Reckless Disregard ☐
12. Type of Action 104 — a — , — —
13. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐
14. Initial Action A. Citation ☐ B. Order ☐ C. Safeguard ☐ D Written Notice ☐ E. Citation/Order Number F Dated Mo Da Yr
15 Area or Equipment
16 Termination Due A Date Mo 03 Da 31 Yr 87 B Time (24 Hr Clock) 0800

Section III—Termination Action

17 Action to Terminate
18 Terminated A Date Mo Da Yr B Time (24 Hr Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA
20 Event Number 5211791
21 Primary or Mill
22 Signature James E Kist
23 AR Number 23150

MSHA Form 7000-3, Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1. Date Mo Da Yr 03 24 87	2. Time (24 Hr. Clock) 0750	3. Citation/Order Number	2844805

4. Served To James T. Jensen, Counsel for EMC
David Lauriski, Dir. of Safety UP&L

5. Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div.

6. Mine Wilberg

7. Mine ID 42-00080 (Contractor)

8. Condition or Practice

8a. Written Notice (103g) ☐

The circuit breaker contained in the 5th Right belt drive power center (Company No. 06-345) that provided protection for the 480 volt, three phase circuit to the 150 horsepower Ingersoll-Rand electric air compressor, Company No. 14-025, located in 1st North, No. 4 Entry, 36 Crosscut, was not marked for identification.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9. Violation A. Health ☐ Safety ☒ Other ☐ B. Section of Act — C. Part/Section of Title 30 CFR 75.904

Section II—Inspector's Evaluation

10. Gravity

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐

B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☐ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☒

C. Significant and Substantial (See Reverse): Yes ☒ No ☐

D. Number of Persons Affected 01

11. Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐

12. Type of Action 104-d-1

13. Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐

14. Initial Action A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ E. Citation/Order Number 2844485 F. Dated Mo Da Yr

15. Area or Equipment

The cable from the transformer at 1st North, No. 4 Entry, 35 Crosscut to and including the air compressor at 1st North, No. 4 Entry, 36 Crosscut.

16. Termination Due A. Date Mo Da Yr B. Time (24 Hr. Clock)

Section III—Termination Action

17. Action to Terminate

Equipment no longer in service. Area under seal and roof fall on or about December 23, 1984. Circuit breaker removed during investigation on or about July 30, 1986.

18. Terminated A. Date Mo Da Yr 07 30 86 B. Time (24 Hr. Clock)

Section IV—Automated System Data

19. Type of Inspection (activity code) AFA

20. Event Number 5211791

21. Primary or Mill

22. Signature James P. Kirk

23. AR Number 23150

MSHA Form 7000-3 Mar 85 (Revised)

tion/Order

U.S. Department of Labor
Mine Safety and Health Administration

olation Date
Mo 3 | Da 24 | Yr 87 | 2. Time (24 Hr Clock) 0750 | 3. Citation/Order Number 2844806

James T. Jensen-Counsel for EMC
David Lauriski-Dir. of Safety UP&L

5. Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining D

Wilberg

7. Mine ID 42 — 00 0 8 0 (Contractor)

or Practice

8a Written Notice (103g

n identification check used to provide positive identification of any person nderground was not found on the belt or anywhere else on the body of ames Bertuzzi.

his condition or practice was found during the investigation of the multiple atal mine fire which occurred in the 1st North, 5th Right area of the mine on ecember 19, 1984. The underground investigation was substantially completed on eptember 26, 1986.

See Continuation Form (MSHA Form 7000-3a)

A. Health ☐ Safety ☒ Other ☐ | B. Section of Act — | C. Part/Section of Title 30 CFR 75.1715

spector's Evaluation

y or Illness (has) (is): No Likelihood ☒ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐

or Illness could reasonably be expected to be: No Lost Workdays ☒ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☐

icant and Substantial (See Reverse): Yes ☐ No ☒ | C. Number of Persons Affected 001

e (check one)
☐ B. Low ☒ C. Moderate ☐ D. High ☐ E. Reckless Disregard ☐

Action 104 — (a) — , — — | 13. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐

tion
on ☐ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ | E. Citation/Order Number | F. Dated Mo Da Yr

quipment

on Due | A. Date Mo Da Yr | B. Time (24 Hr. Clock)

Termination Action

Terminate

ody removed from the mine during the investigation on or about December 16, 1985.

d | A. Date Mo 12 Da 16 Yr 85 | B. Time (24 Hr. Clock)

Automated System Data

nspection ode) A F A | 20. Event Number 5211791 | 21. Primary or Mill

AR Number 21715

7000-3 Mar 85 (Revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1 Date Mo 03 Da 24 Yr 87 — 2. Time (24 Hr. Clock) 0750 — 3 Citation/Order Number 2844810

4. Served To James T. Jensen-Counsel for EMC
Dave Lauriski-Dir. of Safety UP&L

5. Operator Emery Mining Corp. and its successor-in-interest Utah Power & Light Co., Mining Div

6 Mine Wilberg

7. Mine ID 42 – 00080 (Contractor)

8 Condition or Practice — 8a Written Notice (103g) ☐

Emery Mining Corporation failed to submit a fan stoppage plan to the Secretary or his representative for approval.

This condition or practice was found during the investigation of the multiple fatal mine fire which occurred in the 1st North, 5th Right area of the mine on December 19, 1984. The underground investigation was substantially completed on September 26, 1986.

See Continuation Form (MSHA Form 7000-3a) ☐

9. Violation — A. Health ☐ Safety ☒ Other ☐ — B. Section of Act – — C. Part/Section of Title 30 CFR 75.321

Section II—Inspector's Evaluation

10. Gravity

A. Injury or Illness (has) (is): No Likelihood ☐ Unlikely ☒ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐

B. Injury or Illness could reasonably be expected to be: No Lost Workdays ☒ Lost Workdays or Restricted Duty ☐ Permanently Disabling ☐ Fatal ☐

C. Significant and Substantial (See Reverse): Yes ☐ No ☒ — D. Number of Persons Affected 080

11 Negligence (check one)
A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐

12. Type of Action 104–d–19 – –

13. Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐

14. Initial Action A. Citation ☒ B. Order ☐ C. Safeguard ☐ D. Written Notice ☐ — E. Citation/Order Number 2844485 — F. Dated Mo 03 Da 24 Yr 87

15. Area or Equipment

Entire mine.

16 Termination Due — A. Date Mo Da Yr — B. Time (24 Hr. Clock)

Section III—Termination Action

17 Action to Terminate

A Fan Stoppage Plan was submitted and approved on July 26, 1985.

18. Terminated — A. Date Mo 07 Da 26 Yr 85 — B. Time (24 Hr. Clock)

Section IV—Automated System Data

19 Type of Inspection (activity code) AFA — 20. Event Number 5211791 — 21 Primary or Mill

22 Signature — 23 AR Number 21913

MSHA Form 7000-3, Mar 85 (Revised)

Senator HATCH. Our next witness will be the former Health and Safety Specialist at MSHA, Mr. Herschel Potter.

While Mr. Potter is coming to the witness table, I would want to in open forum remind the FBI that we asked for a report on April 13th of this year with regard to their findings with regard to arson or any other evidence that they may find. So I am hoping that the FBI will get that report to us so that we can complete this record, and we will follow up with another letter. Admittedly, it has only been a couple of weeks, but we hope we will get the report.

Now, Mr. Potter, it is my understanding you will submit your statement for the record, and we will start with questions. You have a short closing statement that you may or may not wish to make.

STATEMENT OF HERSCHEL POTTER, FORMER HEALTH AND SAFETY SPECIALIST FOR MSHA, GLOUCESTER, VA

Mr. POTTER. Yes, sir. I may have a closing statement, yes, sir.

Senator HATCH. That will be fine.

Mr. Potter, I want to thank you for your assistance. I want to thank you for being here today. And I do have a few questions.

What started the fire on December 19, 1984, in your opinion?

Mr. POTTER. According to the investigation conducted by MSHA, the fire started at the compressor.

Senator HATCH. Do you agree with that?

Mr. POTTER. Yes, sir.

Senator HATCH. Was the compressor properly fireproofed and ventilated?

Mr. POTTER. No, sir. There were several regulations governing the compressor that were not complied with nor enforced.

Senator HATCH. How did you rule out the suggestions that the fire might have started on the belt entry or at a transformer at another section of the intake entry?

Mr. POTTER. The transformer was located in No. 35 Crosscut, just to the west of No. 4 Entry, and when we recovered the transformer, there was a service manual in a pocket on the front of the transformer nearest the fire, and that service manual was charred a little around the edges and on the first page, but it was not damaged to the point where it could not be read. So if there had been a fire around the transformer, I think that service manual, being of paper, would have burned.

At the belt, in No. 34 Crosscut—also at the transformer—there were a number of power cables. Those cables will start to discolor and show some signs of fire at about 400 degrees Fahrenheit, and we do not have that evidence.

At the belt drive on the right side of No. 4 Entry, facing south that would be to the west, we found that near a nitrogen tank there was a tag with dates and initials that were readable, had not burned. The line starter, as some people call the belt starter, was not damaged. The logo was readable. When we took the cover off the line starter, it was as if it just came from the factory. There were a number of oilcans, I think five in number, sitting between the line starter and the No. 4 Entry. We determined that there might have been oil in one of them, and there was no evidence of fire around those oilcans.

Compressors, if you do not mind sir, compressors are notorious for starting fires not only in the mining industry but in all industries. And there is a lot of evidence that Mr. Huntley spoke to here today that I agree with 100 percent, that the compressor was the cause of the fire.

Senator HATCH. In your opinion, did the modification granted Emery for the operation of the tailgate on the Fifth Right section with the roof fall, the place where we have been describing the roof fall, did that have any impact on the loss of life in the Wilberg fire?

Mr. POTTER. In my opinion, if the tailgate had been kept open, although there were no regulations requiring it, if the tailgate had been kept open, and the men on that section and the women had known that that was an alternative escapeway, although it was not designated by the company as an escapeway, that the loss of life may not have been as great.

Senator HATCH. Not as great. But if there had been a regulation that the tailgate be kept open as a passageway as recommended by the MSHA Longwall Mining Task Force, is it possible that a great number of these miners would have been safe and would have gotten out?

Mr. POTTER. That is my opinion, yes, sir.

Senator HATCH. All right.

Mr. POTTER. And I might just mention that task force. If you read it very closely, the task force addressed more than two-entry mining. It addressed all longwall mining. It said the tailgates in all longwall mining should be kept open.

Now, there are roughly 100 longwall faces in this country, and as Mr. McMillan said, there are 11 of them that are use in a two-entry system. But there are 100 longwall faces, and that means all of them should keep the tailgates open.

Senator HATCH. Okay, then, you do not think I have been too tough on Mr. McMillan in asking that we get this done?

Mr. POTTER. Senator, I think you were at your best this morning. Just continue.

Senator HATCH. Well, you may be the only one who has ever said that, is all I can say.

Mr. POTTER. I might also add there have been statements made that the Fifth Right was a two-entry system. When Fifth Right was developed, and until they cut into the bleeder systems, and until the tailgate or the set-up entries were driven north off of No. 2 Entry in Five Right to intersect Six Right, it was a two-entry system. It was developed as a two-entry system. But once those intersections were made with the bleeder, and with Sixth Right, what now becomes the Fifth Right tailgate, that became a multiple-entry section. It was no longer a two-entry section. It was not a two-entry section at the time of the fire.

Senator HATCH. All right. Do you think there is any justification, such as giving MSHA and the mining industry adequate study time for there not to be such a regulation in place right now?

Mr. POTTER. Well, it has been 2 years since that task force released its findings.

Senator HATCH. So there is really no justification.

Mr. POTTER. There is really no justification for it, no.

Senator HATCH. Have you ever recommended mandatory hands-on training with self-rescue devices during your tenure at MSHA?

Mr. POTTER. Senator, there were three people assigned to develop the regulations for the use, maintenance and training of SCSRs. That was myself, a gentleman by the name of Bruce Humphrey, who has retired, and a gentleman by the name of Charles Samples, who died several years ago.

We recommended in 1976-77, in that time period, that there be hands-on training. And as we went through the rulemaking process, we the Committee did not prevail.

Senator HATCH. As a matter of fact, that was in 1977.

Mr. POTTER. Well, it was in that period of time. I am not sure of the exact date.

Senator HATCH. All right. But you were shot down, in other words?

Mr. POTTER. Well, our opinions were not—we did not prevail in our argument, no.

Senator HATCH. Now, let me ask you this. Did the Union act responsibly in the manner of the jerryrigging of the compressor that you believe started the fire?

Mr. POTTER. No, Senator. This is a very difficult subject for me to place blame on the miners.

Senator HATCH. But I am just asking you did they act properly.

Mr. POTTER. But they are the Union; the miners there are the Union. They represent the Union.

Senator HATCH. Right.

Mr. POTTER. I think, as Congressman Nielson said earlier, that there is enough blame in this fire that MSHA, the company, United Mine Workers, and the State of Utah have to take responsibility for it.

Senator HATCH. All right. Without mentioning any names of persons who may be involved in this matter, which you have indicated may be a potential criminal case, are you sure that the Union had knowledge of the jerryrigging itself?

Mr. POTTER. Okay. The person who bridged-out or bypassed or whatever word you want to use, the heat temperature switch, was a person in the rank and file. And he did this under the supervision of an agent of the operator.

Senator HATCH. I see. Now, Mr. Potter, in your opinion why was it that the jerryrigging went unreported?

Mr. POTTER. Well, I think it was reported. It was reported to people above the supervisor who first knew about it, and the part was ordered, so it was known at some level in management higher than the person, the immediate supervisor.

Now, why the rank and file person failed to report it to a health and safety committeeman, I do not know.

Senator HATCH. Okay. Now, we also learned today from this hearing that there has been little action in following up your recommendations regarding safe use of an air compressor and the recommendations of the Longwall Mining Task Force. Why do you think that is so?

Mr. POTTER. I really have no idea. I was given a copy of Mr. Ryan's memorandum much later after it was written, by a person in that office.

Senator HATCH. But you would conclude with me that it should not have been ignored; it should have been something immediately jumped on and done.

Mr. POTTER. There has been other investigation made of a criminal nature following a fatal that did not wait for the citation.

Senator HATCH. I see. We heard about your memo to Mr. Spicer. You brought it up last September, regarding your request for a special investigation; and Mr. Ryan's response to Mr. Spicer, recommending that MSHA wait to get more evidence.

Now, did Mr. Ryan ever tell you what evidence he thought they could get, or in what ways your particular memorandum was insufficient?

Mr. POTTER. I have not had any discussion with Mr. Ryan about that memorandum.

Senator HATCH. So he never really discussed it with you?

Mr. POTTER. No, sir.

Senator HATCH. Okay. On the copy of your September 29th memo regarding this matter, that is, the copy we received from MSHA, there is an annotation to Mr. Ryan to set up a meeting with the appropriate people to discuss the matter, at least on our copy. The annotation is signed with the initials "J.L.S." which we have confirmed is Jerry L. Spicer, the recipient of your memorandum.

Was such a meeting ever set up?

Mr. POTTER. I have no knowledge of it.

Senator HATCH. Okay. It is my understanding that the verbal testimony, the sworn statements that you took from Union and Emery personnel in the spring of 1985, shed considerable light on how the compressor was jerryrigged.

Mr. POTTER. Yes, sir. That was one of the bits of testimony that was fully supported.

Senator HATCH. Yes. And you got the physical evidence when the fire was put out and you actually went in there and got the compressor itself; is that right?

Mr. POTTER. That is correct.

Senator HATCH. That was in the summer of 1986, right?

Mr. POTTER. That is correct.

Senator HATCH. I am not asking if you had enough to solve the case at that point, but do you feel strongly that you had enough evidence in-hand to support the opening of a special investigation?

Mr. POTTER. That was my belief, yes, sir.

Senator HATCH. Why do you think, then, that MSHA ignored you on this point and did not open a special investigation until March of this particular year?

Mr. POTTER. I have no knowledge as to why.

Senator HATCH. Okay. Now, Mr. Potter, if there had been a third entry into the Fifth Right section, as has been advocated by the United Mine Workers, do you think that that entry would have permitted anyone else to have survived this fire?

Mr. POTTER. With the location of the fire on an intake air current, with a velocity of air of something like 400 feet per minute, with a short distance there of about 2,400 or 2,500 feet; with the training that those miners had received in the use of SCSRs—and I believe that our regulations need adjusting to require hands-on training—but with no hands-on training, it is my opinion that those miners did not have a chance if you had had ten entries up there.

Senator Hatch. So that entry would not have made a difference in this particular case?

Mr. Potter. My professional opinion is it would not have.

Senator Hatch. All right. Officials of the Utah Power and Light Company have told my staff that they plan to introduce a concept whereby the entries to the next section to be mined are driven before mining begins on the present section.

For instance, if the Fifth Right could be mined under this concept, the entries to Fourth Right would have to be ready. Does this concept have any merit, in your opinion?

Mr. Potter. Yes, sir, it certainly does.

Senator Hatch. So that would. Okay. It seems to me it would provide the same additional passageway as would a three-entry system, without the associated roof control problems of the third entry; am I correct on that?

Mr. Potter. Yes, sir. And I think those entries would be on an intake side as I understand the UP&L's mining system, and I think that would provide a rapid means off the section down to–in the case of Fifth Right, it would have been into Fourth Right and out the section.

Senator Hatch. But even if we did that, and Utah Power and Light is going to do that, would such a concept, even if in place at the time of the Wilberg fire, have saved lives?

Mr. Potter. If the miners had known that those two set-up entries—and that is what they are called—had been connected to Fourth Right and had been open for travel, timber and ventilate, yes, sir, I think it would have.

Senator Hatch. All right. Now, Mr. Potter, much has been said, I might add, about Emery Mining Company going for a production record at the time of the Wilberg tragedy. Now, in your opinion, did the number of persons working in the Fifth Right section and the volumes of equipment in use contribute to the diminution of safety that could have led directly to the tragedy?

Mr. Potter. I do not think the number of people trying to set a company production record for 24 hours had anything to do with the fire. It added to the severity of the fire because you had additional personnel and construction people up there, building cribs, as the longwall retreated, and you had additional management people on the section, so it accounted for a more severe accident with a larger loss of life.

Senator Hatch. Mr. Potter, was the fire at the Wilberg Mine on December 19, 1984 an accident, or was it a failure? In other words, was it a failure for which MSHA and the company both share responsibility, in your opinion?

Mr. Potter. I would like to take a minute or two to answer that question.

Senator Hatch. Sure.

Mr. POTTER. Coal has been mined in this country for well over 100 years. There are no new ways to kill miners. They are killed alone, in pairs and in groups, the same way as they have been killed many, many years before.

We call them "accidents"; I think that it is time now that we start calling them "human failures". It was a human failure of everyone concerned with the safety of those miners on that section that caused the loss of life and the fire.

Senator HATCH. All right. Let me turn to Congressman Nielson, unless you have any further statement you would care to make.

Mr. POTTER. No, sir.

[The prepared statement of Mr. Potter follows:]

MINE CONSULTANTS, INC.
Health & Safety • Fires • Explosions • Investigations • Inspections • Expert Witness

STATEMENT

OF

HERSCHEL H. POTTER

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

OVERSIGHT HEARING

ON

WILBERG MINE FIRE
EMERY MINING CORPORATION

April 27, 1987

Gloucester Village Drive • P.O. Box 697 • Gloucester, Virginia 23061 • (804) 693-9692

On Tuesday, March 24, 1987, the Mine Safety and Health Administration (MSHA) released a preliminary report on the Wilberg Mine fire. Following are comments on that report and on the citations and orders that were issued. This is intended as constructive criticism to assist MSHA in preparing a more factual account of the Investigation Team's findings. Also, MSHA is urged to place responsibility on each organization that contributed, either by acts of omission or commission, to that human failure which resulted in the deaths of 27 miners.

Preliminary Report

The last sentence of paragraph 2, page 2 is misleading. It leads the reader to believe that the 5th Right section, at the time of the fire, was a two-entry system.

Two developing entries were driven to a point where they intersected the bleeder entries. Two set-up entries were driven north off of the no. 2 development entry of 5th Right to intersect the no. 3 entry of 6th Right, which then became the return airway and the tailgate entry for the 5th Right section. When the connections were made, the 5th Right section was a multiple-entry section; i.e., there were more than two entries. The distance between the no. 2 entry (headgate), 5th Right and the return airway (tailgate) was about 600 feet. The distance across the longwall face made it imperative that the return airway (tailgate) be kept open for travel.

The authors have not written the report in the style normally followed for such reports. There are facts, assumptions, unsupported testimony and opinions written as if the Investigation Team knew beyond a reasonable doubt that these events occurred. For example, on page 4 under the heading "Activities on the 5th Right Section, A hazy condition was present at the headgate area, and a discussion about it concluded that it was probably due to diesel equipment fumes." This is not a known fact. Mr. Kenneth Blake informed the Investigation Team of this condition when he gave his sworn statement; therefore, to place this information in its proper perspective, the source should be stated.

The Investigation Team believes that Mr. Blake was on the 5th Right section when the fire was reported and that he escaped the section. However, so much of Mr. Blake's account of his actions following notification of the fire was so embellished that it is useless. Mr. Paul Salisbury's statement is not fully discussed. The activities of Mr. Alex Tidwell and Mr. Clinton Price are vouched for only by each other, and there is disagreement in their statements.

Escapeways

The fourth paragraph page 11, last sentence reads, "The indirect route of travel of the 5th Right intake escapeway was a violation, but did not contribute to the accident since it was not used."

Federal mining regulations may be compared to a net. Each strand in a net provides strength. If one strand is broken, the net loses strength. As more strands are broken, the net becomes weaker. So it is with Federal mining regulations. Who can say one specific regulation is more important than another? Each provides strength to the entire health and safety well-being of the miners. The only time a health or safety regulation stands alone is when it is legally challenged. At all other times each regulation is a part of the whole.

Writing off the role that the Ventilation Plan, approved by MSHA, which included the route of travel for the intake escapeway for the 5th Right section, is not that simple. It will never be known and no one can say for certain what the outcome would have been if the approved Ventilation Plan had required the split of air for the 5th Right section be routed from the no. 2 entry, First North, through the no. 33 crosscuts. Certainly the intake air current for the 5th Right section would not have been traveling south in no. 4 entry, First North. In all probability this entry would have been one of the main return airways for First North.

It should be pointed out that if there is a fire on an intake airway, there will be difficulties for miners working inby the fire on the same intake air current. For example, if the fire had occurred on the air compressor when it was installed in the no. 2 entry, First North, near the 4th Right section, every miner inby the fire would have been exposed to the products from the fire. The 4th Right, 5th Right and 13th Right sections were all ventilated by a split of air off of the intake air current in nos. 1 and 2 entries, First North.

Return Airway - Tailgate

The discussion of the return airway (tailgate entry) off of the 5th Right section has been so obfuscated that it defies the logic of any reasonable person. It has long been the policy of MSHA that when a return airway reached a point where it is unsafe to travel; i.e., to be walked or crawled in its entirety, mine management must file a petition for modification to determine if it may continue in use. The procedures for filing a petition for modification are set forth in 30 CFR 44. This return airway should have been no exception, and the procedural safeguards of the petition process were bypassed.

The last sentence of the last paragraph on page 11 of the Preliminary Report should be deleted. The bottom line is that means to escape through the tailgate entry should be provided or the longwall taken out of production. There can be roof falls on the longwall face that would require miners to use the tailgate entry as a means of egress from the section.

Firefighting, Escapeway and Evacuation Plan

The loss of the Wilberg Mine and the long recovery can be traced to failure to train miners, both management and the rank-and-file, in procedures to fight and control mine fires. The regulation used to ensure that miners are trained in firefighting procedures is 30 CFR 75.1101-23. This regulation was not complied with or enforced.

When it was determined that the fire was out of control, proper firefighting procedures required that the volume and velocity of air passing over the fire be reduced or cut-off. In the case of the Wilberg fire, the permanent stoppings between nos. 2 and 3 entries First North, the intake and the belt entry, and the permanent stoppings between nos. 3 and 4 entries, the belt entry and the return entry, south of the 5th Right section should have been removed. Removal of these stoppings would have short-circuited, i.e., bypassed, the intake air current traveling north in nos. 1 and 2 entries through these newly opened crosscuts. The air would have entered the return airway for First North and traveled to the surface. This would have taken the air off of the fire.

Following that, a fresh air base would have been established outby or south of the 5th Right section, the fire would then have been approached from the south, and in all probability fought using direct firefighting techniques. The mine rescue teams would have been working from a fresh air base that was outby the fire. None of the miners involved in the rescue attempt and the firefighting activities would have been exposed to the hazards as they were with a fresh air base inby the fire, which was the case at Wilberg.

There are other benefits that would have been gained by training in how to fight and control mine fires. The fire burned to the surface and resulted in the construction of 15 seals because the fire was not controlled at or near the point of origin. To recover the mine required about 300,000 hours of exposure, about 4,700 hours of this work by miners wearing breathing apparatuses under extremely hazardous conditions.

In my opinion, the outcome, i.e., the deaths of the 27 miners, would have occurred even if the permanent stoppings had been removed. Many of the other problems would not have occurred if the ventilating current had been taken off of the fire.

In the first instance, EMC must take the greater responsibility for not acting to short-circuit the air; but after other agencies were notified and persons experienced in fighting mine fires arrived on the scene, action should have been taken to remove the air from the fire. In my opinion, establishing a fresh air base inby the fire was a risk that should never have been accepted by anyone in a position of authority. It is my belief that two principles of mine rescue and firefighting were compromised: (1) a fresh air base inby the fire and (2) chasing the fire or trying to control the fire by going with the ventilating current.

The Preliminary Report appears to focus on the miners on the 5th Right section for not having knowledge of firefighting, escapeway and evacuation procedures. The investigation supports this conclusion; however, according to sworn statements, no one outby the fire had sufficient knowledge of firefighting procedures to be effective in controlling mine fires. From the time the fire was discovered there was chaos. There was no effective organization, the location of firefighting equipment was not known, miners had problems removing caps from fire hose outlets, etc. This is only a partial listing of the many problems that surfaced on the night of December 19, 1984.

MSHA issued a citation to Emery Mining Corporation for failure to train miners in the use of self-contained self-rescuers ((SCSRs) who were on the 5th

Right Longwall section. This regulation, as I have stated in an earlier memorandum to the Agency (see Appendix A), is vague and lacks specificity to be enforceable; however, another regulation, 30 CFR 75.1105, which was also addressed in my memorandum, is vague and in its present language is unenforceable. This regulation was not cited by MSHA. Hypothesizing, if there had been a current of air of sufficient volume and velocity flowing across the air compressor in the No. 36 crosscut to the return airway, the smoke and carbon monoxide from the fire would not have come out into the intake air current for the 5th Right section. Therefore, even though other regulations were not complied with and were not enforced; such as a fireproof enclosure and a fire suppression system for the air compressor, the intake escapeway would have been free of the products of incombustion. The miners on the 5th Right section could have escaped the section using the intake escapeway.

With the release of the Preliminary Report certain citations and orders were issued. Among these citations was Citation No. 2844816. This citation is not factual in that the last sentenceof Item 8, Condition and Practice, is not correct. The last sentence reads: This was done when there was a tag on the unit that stated "F.B.I. Don't take away any parts." See Appendix B. There was no Federal Bureau of Investigation (FBI) tag on this unit or any other unit. In fact, at the time of the occurrence, the FBI had not joined the investigation. By this statement another shadow was cast on the credibility of this report.

I was notified by an official of EMC that the monitoring units (CBFDs) at the Wilberg Mine had been moved. The monitors were taken to one of the mines in the Des-Bee-Dove mining complex. I immediately assigned Mr. Theodore Caughman, Special Investigator, to conduct an investigation. The investigation revealed that moving the two units was not intentional or willful. Statements from EMC officials are in the Investigation's Administrative File.

Conclusion

With the qualifiers in the opening paragraph it would have been in the best interest of the Agency to have stated, in this paragraph, that the "probable" cause of the fire was an improperly maintained, examined and installed air compressor.

Actions Taken by MSHA to Reduce the Likelihood of Similar Occurrences

- Item 1 If there are only two entries, they must be separated one from the other so that the air current will flow to the working section.

- Item 2 Was 30 CFR 75.1714(b) interpreted to require "hands on" training? Is the training discussed here to be conducted at specific time periods or was this a one-shot effort?

- Item 3	What was the weakness? Were those written instructions in the form of a policy? When this program was re-emphasized, what were the findings?
- Item 4	This has been discussed elsewhere in this statement.
- Item 5	The plan approval process is not a rule-making procedure. If MSHA should require a coating material on aluminum overcasts and the mine operator refuses, MSHA has no means to enforce this requirement. The mine operator can put forth a legal challenge, and based on past court rulings, will prevail. The clean way to handle the use of aluminum alloy underground is to develop and promulgate a regulation prohibiting its use. This is the case in the European Mining Community.
- Item 6	"Clearer definition," "more air compressors being housed in fireproof structures," "nearly all" - The statutory requirement is that compressor stations be fireproof structures. What was the "clearer definition"? Why not all air compressors be housed in fireproof structures rather than "more"? Why not all unattended air compressors not using fire-resistant fluids be equipped with fire suppression devices rather than "nearly all"?
- Item 7	This is a pacifier.
- Item 8	What is the status of rule-making?

The Investigation Team advised the Agency on actions to be taken to prevent a similar recurrence. The memorandum was dated September 20, 1986, Subject: Recommendations for Prevention of a Wilberg Mine Fire Accident. See Appendix C. There were 11 recommendations made, and they were based on the findings of the Investigation Team.

Following is a discussion of what is not in the Preliminary Report. These conclusions are already known.

There is no disagreement concerning Emery Mining Corporation's (EMC) responsibility in the Wilberg Mine fire, and the Preliminary Report focuses on that area of responsibility.

One of the purposes of an investigation is to determine how and why an accident occurred in order that remedial actions may be taken to prevent a recurrence in the same or other mine. To fulfill this purpose, it is necessary to determine the pertinent physical conditions in the mine and any personal acts of omission or commission that led to the occurrence. It is not a function of the investigation team to affix legal responsibility. The investigation must identify any person who performed an unsafe act and any person who failed to take reasonable preventive or precautionary actions - especially if his/her actions were in violation of Federal Regulations.

Accident investigators are trained to determine the root cause of the accident or the chain of events leading to the accident. The concept of an accident chain suggests that it takes many factors, some more important than others, all interrelated, to make an accident.

With this concept of accident investigation it can certainly be said that if Emery Mining Corporation had complied with the Federal mining regulations, the chain of events leading to the mine fire would have been broken and the fire would not have occurred or the severity of the fire would have been lessened. There is no argument that EMC had a mandatory responsibility to comply with the mining laws and for not doing so must bear a greater responsibility for the fire.

Also there should be no argument that the Mine Safety and Health Administration has a mandatory responsibility and authority to enforce each and every provision of the Federal mining regulations. There is no discretion to pick and choose which regulations will be enforced. So for not enforcing those mandatory regulations that contributed to the mine fire and for approving plans that were not in compliance with regulations, the Agency must accept its deficiencies and share with EMC a great responsibility for the Wilberg Mine fire.

The State of Utah, acting through its Industrial Commission, had General Safety Orders in effect. If the state mining laws had been enforced, the mine fire may have been prevented or may have lessened the severity of the fire. The Mine Inspection Department was understaffed and underfunded. In no way could the Department carry out its mandated responsibility. For that the State of Utah must share in the responsibility for the mine fire.

The United Mine Workers of America must also accept responsibility for the Wilberg Mine fire. This is difficult to say; however, if the health and safety of the miners is to be improved, everyone involved must measure up to their responsibilities.

The Federal Mine Health and Safety Act of 1977, Section 103(f) , gives a representative authorized by the miners a right to travel with Federal mine inspectors during the inspection of any mine for the purpose of aiding such inspection. These representatives at the Wilberg Mine exercised this right. According to sworn statements from these representatives, at no time were violations of Federal regulations that contributed to the mine fire or the severity of the mine fire ever discussed with Federal mine inspectors.

In addition, the Wage Agreement (contract) between the Emery Mining Corporation and the UMWA permitted the UMWA to make five health and safety inspections a year. A review of inspection reports provided to the Investigation Team by the UMWA revealed no violations of regulations on air compressors.

MSHA investigators conducting accident investigations have four objectives: (1) to provide factual information so that recommendations can be made that will prevent a recurrence of a similar accident, (2) to provide legal documentation, (3) to provide information to use in formulating new health and safety standards, and (4) to provide a permanent record. Accident investigations are not made to determine civil or criminal liability under Section 110 of the Mine Act.

There have been questions as to why statements were not taken from Mr. John Barton, District Manager, and Mr. Jenning Bishop, Subdistrict Manager in District 9. This was a decision made by me based on two facts: (1) neither Mr. Barton nor Mr. Bishop had been in the Wilberg Mine in months prior to the fire and (2) representatives of the UMWA raised a number of questions concerning MSHA's policies and actions. Its questions were in letters to the National Office requesting answers under the Freedom of Information Act (FOIA). MSHA responded to all of its letters. These letters and responses were made a part of the Public Record of the Investigation in April 1985. If these two facts had been different, I would have considered taking a sworn statement from Messrs. Barton and Bishop.

On January 11, 1985, I received a telephone call from Mr. Widtsoe Bastian of the Utah Attorney General's Office (AG). A summary of the conversation was that the AG's Office had been conducting an investigation of EMC and UP&L for a considerable period of time. In the course of the investigation it had developed information from confidential sources about the mine fire. Since the AG's Office was not investigating mine fires, it would like to provide MSHA with that information. Arrangements were made for Mr. Alan Yamamoto, attorney assigned to the investigation, to meet with Mr. Bastian.

On January 17, 1985, Mr. Yamamoto, accompanied by Mr. Theodore Caughman, Special Investigator, met with Mr. Bastian in Salt Lake City. Mr. Yamamoto was given three documents. They were:

> Wilberg Mine Fire Report Prepared for Mine Safety and Health Administration by the Utah Attorney General's Office. See Appendix D.
>
> Attorney General's Responses to Emery Mining Corporation's First Set of Interrogations.
>
> Attorney General's Additional Responses to Emery Mining Corporation's First Set of Interrogatories.

In the report prepared by the Attorney General's Office three persons were identified as witnesses A, B and C. Mr. Bastian agreed to provide the names of these witnesses if he received their permission. I don't remember his receiving the permission of witness A. Many of the people identified by name in the report had already been interviewed by the Investigation Team.

I assigned Mr. Caughman to contact and interview thoese persons identified in the report, including witnesses A, B and C, if their names were provided. This assignment was completed with no new information relative to the mine fire. Based on these interviews and the information in the report from the AG's Ooffice, I decided not to interview Mr. Simonelli.

I returned a call to Mr. Bastian on March 8, 1985. This was a general discussion of MSHA's and the AG's investigation and our subpoena powers. This was my last conversation with Mr. Bastian.

During MSHA's investigation of the Wilberg Mine fire, a search was made for reports of investigations of compressor fires and studies and tests on compressors. Among the documents found was a copy of a "Study of Air Compressor Hazards in Underground and Surface Mines," dated January 1981, contracted to the Southwest Research Institute by the Bureau of Mines. See Appendix E for excerpts from the report. This report was interesting to the Investigating Team for two reasons: (1) we had never seen the report even though the Research Contract was made under the provisions of Section 501 of the Mine Act and (2) many of the findings of the Investigating Team concerning the Ingersoll-Rand Air Compressor at the Wilberg Mine were a duplicate or very similar to those discussed in the Research Report. The point here is that this research report should have been used as a training tool for the mining industry and for Federal mine inspectors or used as a basis for developing mandatory regulations for the use of compressors. Had either one of these avenues been pursued, the fire at Wilberg might never have happened. If the Bureau of Mines awards research contracts, MSHA should follow up and use the results of these contracts to the best interest of the miners.

Throughout the investigation of the Wilberg Mine fire, representatives of the Secretary were constantly faced with problems from representatives of the International Office of the United Mine Workers of America (UMWA). The problems ranged from how the investigation was being conducted; the role of the UMWA; mine recovery procedures, including recovery of the bodies; the collection of evidence; number of UMWA representatives on investigation teams; and this litany goes on and on. Its interference in many instances impeded the investigation rather than assisted.

Problems of managing the investigation were not confined to the UMWA. There were problems with the news media and attorneys representing families of the victims. So that future investigations may be made in a more manageable working relationship, the Secretary should develop and promulgate regulations that would set forth how MSHA will conduct investigations. The regulations should address such issues as public hearings, taking of sworn and confidential statements, rights of the representatives of the miners and the operators, press briefings, etc.

The Preliminary Report released by MSHA on the Wilberg Mine fire is another reason, if not one of the best reasons, why the authority to conduct investigations should be removed from the Agency and the Department of Labor. Reading this report and reading a report on an aircraft accident (see Appendix F for excerpts fromthis report) released by the National Transportation Safety Board, certainly points out what an independent agency can do where there is a conflict of interest.

It may be too much to ask individuals within the Agency (MSHA) to be critical of other individuals. This is true when the responsibility to place blame is by a person who may have similar problems in other investigations. Not since the report on the Belle Isle methane explosion has MSHA put anything in a report that was critical of actions of MSHA personnel. Beginning with an explosion at a Westmoreland mine in southern West Virginia in 1980, MSHA has failed to recognize its contributions to the loss of life in multiple, fatal investigations.

It is my opinion that MSHA is incapable of writing a factual report because of a conflict of interest, being bias and protecting MSHA's image. It is my recommendation that the Secretary of Labor assign the preparation of the report to the supervision of the Office of Inspector General.

Because of the conflict of interest problem and the lack of objectivity by MSHA, I fully support the concept of a National Mining Safety Board.

Senator HATCH. Congressman Nielson?

Mr. NIELSON. Yes. I would like to thank Mr. Potter for working with me many times during the course of this investigation. You said, in answer to the Senator's question, that even if the problems had been a little less, the miners did not have a chance.

Earlier you said—I am not sure I got the exact question there—but you said the miners did not have a chance, where earlier, you said some of them could have gotten out if the Sixth Right had been open.

Now, what was the differentiation between those two, because I missed the difference between the two questions?

Mr. POTTER. I did some qualification there. I said if they had had hands-on training, if they knew how to use their self-rescuers, and if the tailgate had been open, they could have escaped the section.

Mr. NIELSON. But in answer to the second question, with the tailgate closed, even with the extra training, they could not have gotten out; is that correct?

Mr. POTTER. Some of them may have gotten out if they had had hands-on training and were more knowledgeable in the use of the SCSRs.

Mr. NIELSON. If they had known about the bleeder and been trained in going out the bleeder, could some of them have escaped?

Mr. POTTER. Well, Mr. Conover got up to the back of Seventh Right sometime on the night of the 19th.

Mr. NIELSON. Yes, but wasn't it also said that he was seen by the survivor, the one who escaped the fire? Didn't he say he saw Mr. Conover up near what you call the dogleg there?

Mr. POTTER. Yes. Kenneth Blake said that he talked to Jim Bertuzzi and Mr. Conover at Number 5 Crosscut in the belt entry, No. 2 entry.

Mr. NIELSON. But if that was the case, then he came that direction and then had time to go all the way through back to the bleeder.

Mr. POTTER. That is correct.

Mr. NIELSON. Had he gone to the bleeder first, without coming down this way, he likely would have escaped; is that correct?

Mr. POTTER. That is correct, but——

Mr. NIELSON. And by inference, wouldn't others have been able to escape had they known about the bleeder?

Mr. POTTER. It is a possibility. But if you believe Kenneth Blake's statement, he said that when Vic Sigaloni answered the phone, he told Barry Jacobs to get his men and get down the belt. So the evacuation entry, according to Kenneth Blake's statement, was the belt entry.

Mr. NIELSON. Now, in answer to a previous question, you said the 5 minute delay caused people to—let me rephrase this—people could have survived if there had not been that five-minute delay. Does that correspond to your statement that they did not have a chance? Would they have had a chance if they had had 5 minutes more?

Mr. POTTER. They may have. But smoke and carbon monoxide, travelling with an air velocity of about 400 feet per minute is moving pretty fast.

Mr. NIELSON. I am just trying to determine exactly how much chance did they have; if they had had that extra 5 minutes, and they had had proper training, even with Sixth Right closed, could they have had a chance to get out?

Mr. POTTER. Well, it is speculation on my part. It is a good possibility.

Mr. NIELSON. And that is in variance with your statement they did not have a chance, then.

Mr. POTTER. I do not think they had a chance based on the facts as I know them, with that air velocity and with the training that they had had.

Mr. NIELSON. Okay. On the question did the union have any knowledge of the jerryrigging, I was not satisfied with your answer there. Did they or did they not know about that fact that the compressor was jerryrigged and had no on-off switch?

Mr. POTTER. The person who did the work was a member of the United Mine Workers I referred to as rank-and-file. He had knowledge. The immediate supervisor or an agent of the operator had knowledge. But the UMWA person that made that jerryrig under the direction of management, whether he told anybody about it or not, I do not know.

Mr. NIELSON. Why do you suppose that compressor was allowed to run for 60 hours with no one noticing it, who likely had to pass it every day, a couple times on the shifts, and so forth—how come nobody questioned it?

Mr. POTTER. I do not know, but I have said this before. You tune out noises after you have worked in the mine for some period of time. You will hear things, and you do not pay any attention to that noise. You become accustomed to it. The compressor was not working under any load. It was just sitting there, you might say, idling, loading up and unloading—one of the worst conditions that you can run a compressor under.

As Mr. Huntley said, there were three people who knew it was running—Mr. Blackburn, who worked on the day shift. The belt man testified that there was a leak in the air line at the overcast, and he heard it throughout his shift, and somebody had put some tape over it. So I think there were people who knew that the compressor was running, but it was not the right people.

Mr. NIELSON. During your investigation—this is my final question—were you accompanied by MSHA individuals who were responsible for maintaining physical evidence and observing the process for the purpose of conducting a later investigation?

Let me repeat that.

Mr. POTTER. Please do.

Mr. NIELSON. During your investigation, were you accompanied by MSHA individuals who were responsible for maintaining physical evidence for the purpose of conducting a later special investigation?

Mr. POTTER. There were two special investigators assigned to the investigation team, but we made an agreement when we started collecting the evidence from the mines, after we had gotten into First North, that the sheriff's office, or the Emery County Sheriff, would be responsible for the custody of all the evidence. But we did have two special investigators working with us, yes, sir.

Mr. **NIELSON**. I thank you, and I thank the Chairman.

Senator **HATCH**. Thank you, Congressman Nielson.

Mr. Potter, thanks for your candid remarks. We appreciate your being here with us once again, and we appreciate the service that you have given to your Government over the years. I just want to tell you that we appreciate having you with us today.

Mr. **POTTER**. May I just make a statement?

Senator **HATCH**. Sure.

Mr. **POTTER**. When MSHA testified, they talked about the plan approval process, and you could require certain things under the plan approval process and what-have-you. That has been a sticky point with the industry and MSHA for a number of years. You cannot require everything that you want in the plan approval process.

For instance, on the aluminum overcasts, if you wanted them coated, and you want to put that in the ventilation plan, and the operator would say, "I am not going to permit that to be in my plan," he could challenge that through the courts and would probably prevail. There have been court rulings where MSHA has been ruled against when they tried to put things into plans. It is not a rulemaking process. It is not a clean way of doing things. You have to go and promulgate a rule for it if you need it. Do not try to stick it into a ventilation plan or a roof control plan or some other plan.

The other thing, we let the industry know about what is going on, what they need to do, from information bulletins. Again, if there is not an existing regulation on which the information bulletin is based, you cannot enforce it. There is just no way you can enforce things like that. As you pointed out, you need a regulation, and then you can interpret that regulation if there needs an interpretation.

The problem with MSHA has been a problem for several years. It is kind of like the old British navy adage that says, when there is trouble with the ship, you look at the bridge. I do not fault the inspectors in the field. I do not fault the coal mine inspection supervisor, nor the subdistrict manager. There are many places I do not fault district managers. When you do not have leadership, when you do not have people telling you what you want done and how to do it, you are going to have people straying off and doing things that should not be done. So you have got a leadership problem at MSHA, and it is at the national headquarters.

Senator **HATCH**. Well, let me just say this. You have been very candid. I for one am going to very much miss you now that you have left. Frankly, you are a very fine man, and you have done a very fine job from all that I can see. And your comments, I think, are crucial here, and I think you have made my point again—a very fine man who understands this business and knows what he is doing and who has many friends at MSHA but has stood up here and said what needs to be done. And I just want to thank you for it, and we appreciate your service in the past. I wish you a long life of happiness and joy.

Mr. **POTTER**. Thank you.

Senator **HATCH**. Thank you, Mr. Potter. I appreciate it.

Our next panel will include the representatives of the companies. They will be: Neal Savage, William Zeller, and David Lauriski.

I would like to limit you to five minutes. If you feel like you have to have a little bit more, let me know, but I hope you can cover your testimony in five minutes, because I am running out of time, and I want to be able to ask a lot of questions, and I know Congressman Nielson wants to as well. And I still want to get to the United Mine Workers representatives before we are through.

Mr. Savage, I understand you do not have a statement, but Mr. Zeller does.

Yes?

Mr. **Westerby**. Senator Hatch, Dave Westerby, Utah Power. Mr. Lauriski has prepared some comments that will probably go over five minutes, but we think it is very important to be able to tell this Committee all the steps that have been taken to make sure something like this does not happen again.

Senator **Hatch**. Well, I wonder if we could get you to summarize those, and we will put the full statement in the record. Do the best you can to live within this 5-minute rule, because otherwise we will not have the time to ask the questions we have got to ask. But I do not want to cut you off.

Mr. Zeller, I understand you have a statement, so we will take your statement first.

STATEMENTS OF WILLIAM ZELLER, FORMER EXECUTIVE VICE PRESIDENT, EMERY MINING CO.; DAVID LAURISKI, DIRECTOR OF HEALTH, SAFETY AND TRAINING, UTAH POWER AND LIGHT CO., HUNTINGTON, UT, ACCOMPANIED BY DAVID WESTERBY AND JAMES T. JENSEN, COUNSEL; AND NEAL SAVAGE, SAVAGE INDUSTRIES, SALT LAKE CITY, UT

Mr. **Zeller**. Mr. Chairman, Congressman Nielson, I appreciate the opportunity to appear before you.

From the day of the Wilberg fire, a lot of opinions, a lot of rumors, a lot of allegations, a lot of exploitation of this tragedy has surfaced or taken place. I hope my remarks today can help this Committee cut through the private agenda, sort out what is relevant, get to the facts, and help determine what we all can do to prevent similar tragedies.

At the time of the fire, I was Executive Vice President and General Manager of Emery Mining Corporation. During the fire, I played a very heavy role in the futile attempt to rescue coworkers, neighbors and close friends, and I was also involved with the reentry of the mine to recover the bodies. But I do not plan to discuss the details of these events today.

Instead, I would rather describe the mine prior to the fire and share with you some recommendations and comments I have as a result of the fire.

From 1980 until just before the fire, the injury frequency rate at Wilberg Mine had been reduced by 78 percent. To put this achievement in perspective, the nationwide injury frequency rate for the industry during the same period dropped 31 percent. This improvement was made while the mine increased production 62 percent.

In 1984, the Wilberg Mine produced over 2 million tons of coal, using two longwall-type and three continuous-type production units. Emery Mining Corporation that year was one of only 28 companies in the United States that produced over 2.5 million tons of coal from underground mines. The significant expansion and improvement of Wilberg Mine prior to the fire, particularly in safety, is very important to the purpose of this meeting.

The valuable lessons to be learned from the Wilberg disaster could easily be obscured if the Government, the Union and the industry assumed that it was anything less than a large, modern, well-managed mine.

Emery Mining neither encouraged nor condoned unsafe conditions in its coal mines. Shortly after assuming the operation of the mines owned by Utah Power and Light, the President of Emery Mining set a strong safety policy in place. This policy was expanded and proceduralized during 1983 and was reinforced in a supervisory training program begun that same year.

This program, which had a strong emphasis on safety, led to every supervisory employee accepting and signing a written pledge to make safety the most important ingredient in their work.

During 1983, a revised and more comprehensive safety program was implemented at Wilberg Mine. While this program was designed to increase safety awareness among all mine employees, it also covered mine inspection, accident investigation, emergency procedures and training.

It was not luck or coincidence that caused the accident rate during 1983 to be 51 percent less than it was during 1982, and the rate prior to the fire in 1984 to be 38 percent less than it was during 1983.

These tremendous strides were brought about by the effective efforts of a management team dedicated to improving mine safety and by the help and support received by the UMWA and MSHA.

The mine was deemed safe by labor, management, and Government. Both MSHA and the UMW had finished the complete inspection of the Wilberg Mine less than one week prior to the fire. Over 40 man-days of inspection conducted over a 31-workday period of time had been superimposed on all the required daily and weekly inspections conducted by Emery Mining employees. Exhibits attached to this statement show that mine management personnel were very responsive to inspection findings and were very diligent and prompt in correcting unsafe conditions found.

Emery Mining viewed inspections by both MSHA and UMW as essential, helpful efforts to help management make the mine safer, and we fully endorse the concept that all three had responsibility for mine safety.

During the two-month period immediately preceding the fire, all employees of the Wilberg Mine had received training on the location and use of self-contained self-rescuers and in emergency mine evacuation procedures. All the training had MSHA approval and was presented by the same people who were instrumental in training the mine rescue teams of Emery Mining. Prior to the fire, these teams had won first place in national competition in the combined mine rescue and first aid event two times—a feat never equalled by teams from any other company in this Nation. We had every reason to believe, therefore, that our training programs and efforts were good and that they would compare favorably with other programs in the industry.

Five weeks before the fire, an updated map showing escapeways out of the Fifth Right section had been distributed for posting on that section. Fire drills were the subject of safety meetings held throughout the mine the week before the fire.

Regarding escape routes from the area where the victims were located, the primary designated escapeway, the intake entry, was where the fire originated. The other designated escapeway, which is the belt entry, became impassable because of spreading fire. But two other escape routes remained open and passable throughout the fire, including one that initially was free of smoke and dangerous levels of carbon monoxide.

Regarding the availability of self-contained self-rescuers, we were in full compliance with our MSHA-approved storage plan, and 54 of these devices were in the Fifth Right section at the time of the fire.

Regarding communications, the Fifth Right crew was warned of the fire by telephone, prior to the dense smoke arriving in the production area.

In spite of these safety efforts prior to the fire and these conditions at the time of the fire, 27 people died in Wilberg Mine the night of December 19th, 1984, apparently the victims of smoke inhalation and carbon monoxide poisoning.

Preceding the fire, the company had placed a very strong emphasis on safety at the Wilberg Mine. The inspections by MSHA and UMW immediately preceding the fire had not detected a single factor related to the cause of the fire or the cause of the deaths. At the time of the fire, escape routes were available; each victim carried filter-type self-rescuer on his or her belt, and an ample supply of self-contained self-rescuers were available in the area. All but one of the victims had received training in the use of both type rescuers, and in emergency evacuation less than two months before the fire.

The question then is what went wrong—why did our coworkers die?

It is obvious as a matter of hindsight the efforts of the company to prevent this disaster as well as the efforts of MSHA and UMWA were inadequate.

A few of the changes I believe need to be made are: (1) companies must provide a more thorough training to underground workers in the use of self-rescuers, emergency evacuations, and in the correct response to various emergency situations.

2. The Government should establish regional training centers where miners could be exposed to simulated fire and explosion situations, including the introduction of smoke.

3. All underground miners should be certified by an independent entity that he or she is adequately trained for survival, and the certification should be requisite for continued employment.

4. The representatives of the miners should march in lock-step with Government and companies to increase safety awareness among all underground miners and to help eliminate unsafe work practices.

5. The Government should continue development of a small, efficient, self-contained self-rescuer which could be worn on a miner's belt.

Much has been learned as a result of re-entering the mine and conducting an investigation, and this knowledge could well prevent a recurrence of this type disaster.

Senator HATCH. Mr. Zeller, could you wind it up? We will put your full statement in the record.

Mr. ZELLER. Yes, Senator. In 30 seconds, I will be finished.

Senator HATCH. Thank you.

Mr. ZELLER. It is my perception, however, that a thorough, nonpartisan joint effort to maximize the gaining and dissemination of knowledge from the Wilberg fire may not be taking place. Rather, volleys of accusations and recriminations are threatening to tear apart the alliance between labor, Government and industry that has led to improved mine safety in the past.

Underground coal mines can be made safe, but neither the companies, the representatives of the miners, or the Government can achieve this short of shutting down the mines.

To bring health to the industry and safety to the miners, it is my hope that this Committee can somehow restore the necessary cooperation required between these groups.

Thank you.

Senator HATCH. Thank you, Mr. Zeller.

[The prepared statement of Mr. Zeller, with attachments, follows:]

STATEMENT OF WILLIAM L. ZELLER
FORMER EXECUTIVE VICE PRESIDENT AND GENERAL MANAGER
FOR EMERY MINING CORPORATION
BEFORE THE SENATE LABOR AND
HUMAN RESOURCES COMMITTEE
CONCERNING THE WILBERG MINE FIRE

APRIL 27, 1987

Mr. Chairman and distinguished committee members, I appreciate the opportunity to appear before you. From the day of the Wilberg Mine fire, a lot of rumors, a lot of opinions, a lot of allegations, and a lot of exploitation of the tragedy have surfaced or taken place. I hope my remarks today will help this committee cut through the private agendas, get down to the true facts, sort out what is relevant and help determine what we all can do to avoid similar tragedies.

At the time of this disaster, I was Executive Vice President and General Manager of Emery Mining Corporation. Although I was very closely involved in the futile attempt to rescue co-workers, neighbors and close friends, as well as with the re-entry of the mine to recover the victims, I do not plan to dwell on the details of these efforts. Instead, I will describe the mine prior to the fire and will also share with you some thoughts and conclusions.

From 1980 until just before the fire, the injury frequency rate at Wilberg Mine had been reduced by 78 percent. To put this achievement in perspective, the nationwide injury frequency rate for the industry during this same period dropped 31 percent. This improvement was made while the mine increased production 62% and increased productivity 52%. In 1984, Wilberg Mine produced over two million tons of coal using two longwall type and three continuous type production units. Emery Mining Corporation that year was one of only 28 companies in the United States that produced over two and one-half million tons of coal from underground mines. Within this group of companies, Emery Mining was number one in productivity in the entire nation and within Emery Mining, Wilberg Mine was number one.

The significant expansion and improvement of Wilberg Mine prior to the fire, particularly in safety, is very important to the purpose of this hearing. The valuable lessons to be learned from the Wilberg disaster could easily be obscured if the government, the union and the industry assume that it was anything less than a large, modern, well managed mine.

Emery Mining neither encouraged nor condoned unsafe conditions in its coal mines. Shortly after assuming the operation of the mines owned by Utah Power & Light Company, the president of Emery Mining set a strong safety policy in place. This policy was expanded and proceduralized during 1983 and was reinforced in a supervisory training program begun that same year. This program, which had a strong emphasis on safety, led to every supervisory employee accepting and signing a written pledge to make safety the most important ingredient in their work.

During 1983, a revised and more comprehensive safety program was implemented at Wilberg Mine. While this program was designed to increase safety awareness among all mine employees, it also covered mine inspection, accident investigation, emergency procedures and training.

It was not luck or coincidence that caused the accident rate during 1983 to be 51 percent less than it was during 1982, and the rate prior to the fire in 1984 to be 38 percent less than it was during 1983. These tremendous strides were brought about by the effective efforts of a management team dedicated to improving mine safety and by the help and support received from the UMWA and MSHA.

The mine was deemed safe by labor, management and government. Both MSHA and the UMWA had completed quarterly inspections of the Wilberg Mine less than one week prior to the fire. Over 40 mandays of inspection conducted over a 31 work day period of time had been superimposed on all the required daily and weekly inspections conducted by Emery Mining employees. Exhibits attached to this statement show that the mine management personnel were very responsive to inspection findings and were very diligent and prompt in correcting unsafe conditions found. Emery Mining viewed inspections by both MSHA and the UMWA as essential, helpful efforts to help management make the mines safer, and we fully endorsed the concept that all three had responsibility for mine safety.

During the two month period immediately preceding the fire, all employees at the Wilberg Mine had received training in the location and use of self-contained self-rescuers and in emergency mine evacuation procedures. All of the training had MSHA approval and was presented by the same people who were instrumental in training the mine rescue teams of Emery Mining. Prior to the fire, these teams had won first place in national competition in the combined mine rescue and first aid event two times - a feat never equaled by teams from any other coal company in the nation. We had every reason, therefore, to believe our training programs and efforts were good, and would compare favorably with other programs in the industry.

Five weeks before the fire, an updated map showing escapeways out of the 5 right section had been distributed for posting on that section. Fire drills were the subject of safety meetings held throughout the mine the week before the fire.

Regarding escape routes from the area where the victims were located, the primary designated escapeway (intake entry) was where the fire originated. The other designated escapeway (belt entry) became impassable because of spreading fire, but two other escape routes remained open and passable throughout the fire, including one that was free of smoke and dangerous levels of carbon monoxide.

Regarding the availability of self-contained self-rescuers, we were in full compliance with our MSHA approved storage plan and 54 of these devices were in the 5 right section at the time of the fire.

Regarding communications, the 5 right crew was warned of the fire by telephone prior to the [illegible]nse smoke arriving in the production area.

In spite of these safety efforts prior to the fire and these conditions at the time of the fire, 27 people died in the Wilberg Mine the night of December 19, 1984, apparently the victims of smoke inhalation and carbon monoxide poisoning.

Preceding the fire, the company had placed a very strong emphasis on safety at Wilberg Mine and, until the fire, the efforts had dramatically reduced injuries. The inspections by MSHA and the UMWA immediately preceding the fire had not detected a single factor related to the cause of the fire or the cause of the deaths. At the time of the fire, escape routes were available; each victim carried a filter type self-rescuer on his or her belt; and an ample supply of self-contained self-rescuers were available in the area. All but one of the victims (the V. P. of Operations) had received training in the use of both type rescuers and in emergency evacuation less than two months before the fire.

The question, then, is what went wrong - why did these miners die? It is obvious, as a matter of hindsight, the efforts of the company to prevent this tragedy, as well as the efforts of the UMWA and MSHA had been inadequate.

A few of the changes I believe need to be made are:

1. Companies must provide a more thorough training to underground workers in the use of self-rescuers, emergency evacuations and in the correct response to various emergency situations.

2. The government should establish regional training centers where miners could be exposed to simulated fire and explosion situations, including the introduction of smoke.

3. All underground miners should be certified by an independent entity that he or she is adequately trained for survival, and the certification should be a requisite for continued employment.

4. The representatives of the miners should march in lock-step with government and companies to increase safety awareness among all underground workers, and to help eliminate unsafe work practices.

5. The government should continue development of a small, efficient self-contained self-rescuer which could be worn on a miner's belt.

Much has been learned as a result of re-entering the mine and conducting an investigation, and this knowledge could well prevent a reoccurrence of this type disaster. It is my perception, however, that a thorough, non-partisan, joint effort to maximize the gaining and dissemination of knowledge from the Wilberg fire may not be taking place. Rather, volleys of accusations and recriminations are threatening to tear assunder the alliance between labor, management and government that has led to improved mine safety in the past.

Underground coal mines can be made safe, but neither the companies, the representatives of the miners nor the government can achieve this goal alone, short of shutting the mines down. To bring health to the industry and safety to the miners, it is my hope that this committee can somehow restore the necessary cooperation required between these groups.

EXHIBITS

I Wilberg Mine Injury Incidence Rate 1980 - 1984
II Nationwaide Rating of Productivity - 1984
III Emery Mining Production and Productivity - 1984
IV Early EMC Health and Safety Policy
V Revised and Expanded Safety Policy and Procedure
VI Supervisory Training Certificate
VII Safety Pledge
VIII Content of Wilberg Mine Safety Program
IX Statements About Wilberg Mine - UMWA
X Statements About Wilberg Mine - MSHA

EXHIBIT I

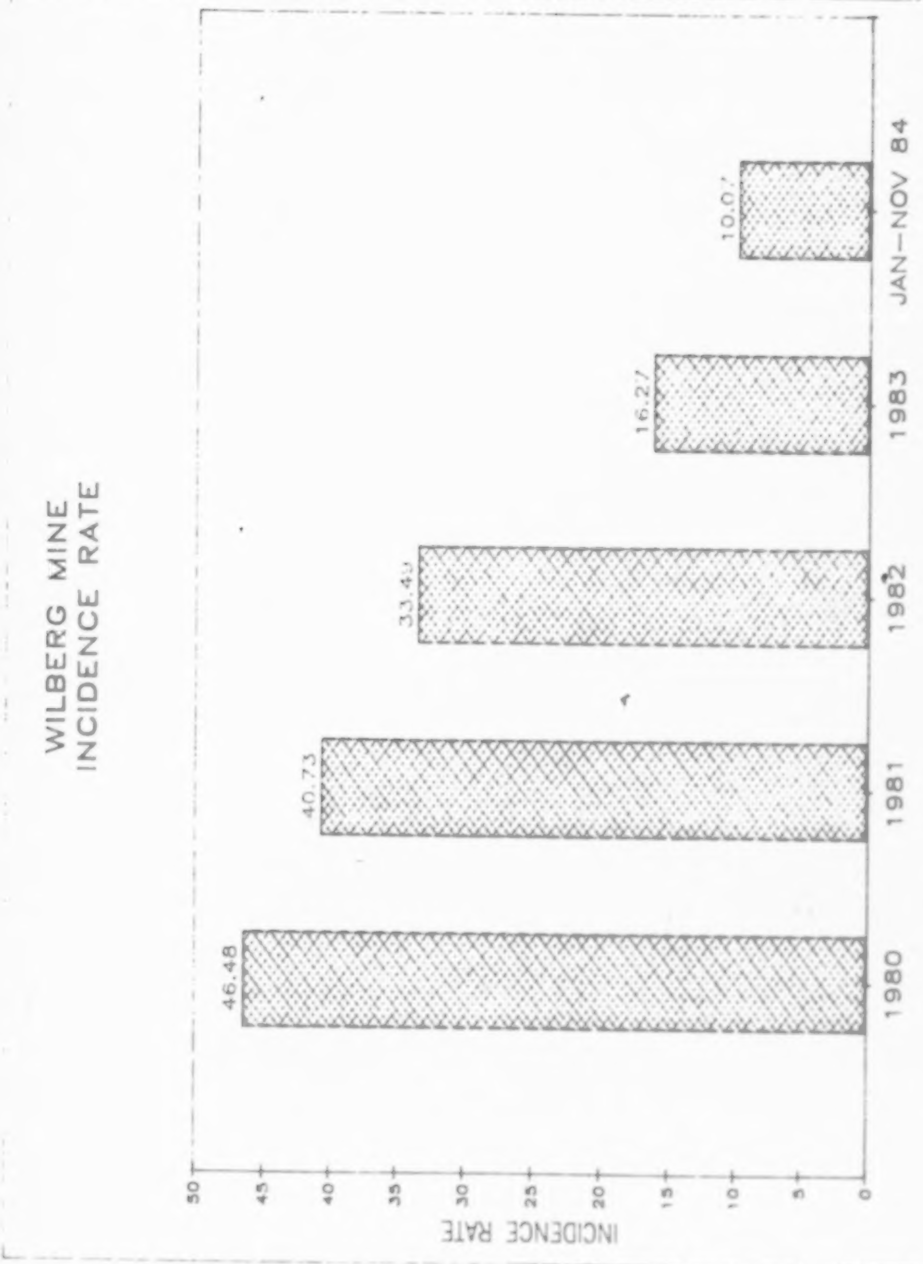

WILBERG MINE
INCIDENCE RATE
INCIDENCE RATE
0
5
10
15
20
25
30
35
40
45
50
46.48
40.73
33.40
16.27
10.07
1980
1981
1982
1983
JAN–NOV 84

EXHIBIT II

NATIONWIDE RANKING OF MAJOR UNDERGROUND COAL COMPANIES IN PRODUCTIVITY

TOTAL YEAR 1984

(All Companies at Rate of Over 2,500,000 Tons/Year)

	COMPANY	TONS UNDERGROUND	PRODUCTIVITY TONS MAN/DAY
1.	Emery Mining Corporation	4,045,296	27.2
2.	Mapco	6,059,712	25.6
3.	Exxon	5,700,450	22.7
4.	United Coal	3,297,284	22.3
5.	Massey	11,267,593	21.0
6.	Sun Company	4,413,857	20.3
7.	Consolidated Coal	31,987,587	20.0
8.	Pyro Energy	4,248,422	18.6
9.	Old Ben	9,541,150	17.8
10.	Zeigler Coal Company	2,688,141	16.9
11.	Inland Steel	3,309,593	16.6
12.	Peabody Coal	20,281,837	16.2
13.	Westmoreland	8,485,017	16.0
14.	Eastern Association	9,510,176	15.7
15.	Valley Camp	2,590,233	15.3
16.	Freeman United	3,508,949	15.2
17.	American Electrical	6,587,036	14.7
18.	North American	4,865,908	14.7
19.	Cyprus	2,809,077	14.7
20.	Pittston	11,642,168	14.3
21.	Rochester and Pittsburg	6,535,852	14.0
22.	Amax	2,545,200	13.7
23.	United States Steel	10,488,986	13.4
24.	Island Creek	5,124,904	13.1
25.	Bethlehem Steel	5,605,397	11.5
26.	Alabama By-Products	3,859,386	11.2
27.	Jim Walter	6,849,688	11.0
28.	Pennsylvania Power	2,925,361	9.7

SOURCE: "Productivity Report, 1st quarter 1985 and Year 1984", Coal Outlook, Pasha Publications Incorporated, August 27, 1985

EXHIBIT III

EMC PRODUCTION AND PRODUCTIVITY STATISTICS - 1984

	Tons Produced	Tons Per Man Day
Deer Creek Mine	1,894,317	23
Des-Bee-Dove Mines	100,304	10
Wilberg Mine	2,054,515	30

EXHIBIT IV

EMERY MINING CORPORATION
HEALTH AND SAFETY POLICY

The health and safety of all Emery Mining Corporation personnel shall be considered of first importance in all our activities. Everything within reason will be done to maintain and improve occupational health and safety standards. Each of us has a responsibility to assure that the prevention of accidents is a continuing part of our daily activities.

Detailed precedures for safety are contained in these safety standards. Each employee must be thoroughly familiar with the contents of this document and abide by the policies and procedures contained therein.

Neal Savage
President

EXHIBIT V PG 1 OF 4

EMERY MINING CORPORATION
Policies and Procedures

REF NO H&S-001
PAGE 1 OF 4
DATE DOCUMENTED 6-10-83
REVISION
SUBJECT HEALTH AND SAFETY POLICY
APPROVED
APPROVED James F. Hamlin, Jr.

Purpose: To preserve the health of every employee and to prevent bodily injury to any employee during the performance of his work.

Scope: This Health and Safety Policy includes and covers the total organization of Emery Mining Corporation. The standards, rules, regulations, work practices, operating methods and procedures, which are established to implement and enforce the Health and Safety policy, will apply equally to each and every employee in production, maintenance, clerical, technical, management and executive classifications of work.

Policy: Emery Mining Corporation will utilize its total resources to protect its employees from health hazards and from bodily injury by:

* strict compliance with Federal, State and company health and safety standards, rules and regulations

* elimination, prevention or control of existing or potential hazards from any source

* planning, implementing and maintaining approved standards for operating methods and procedures

* assigning personnel to work alone only after they are qualified both in job skills and in safe work practices and by providing a planned program for skills training and safety-on-the-job orientation to all inexperienced employees.

EXHIBIT V PG 2 OF 4

EMERY MINING CORPORATION **Policies and Procedures**	REF. NO. H&S-001
	PAGE 2 OF 4
	DATE DOCUMENTED 6-10-83
	REVISION
SUBJECT HEALTH AND SAFETY POLICY	APPROVED H. L. Zeller
	APPROVED James F. Hamlin Jr.

Administration:

A. The Vice President of Operations has the authority and primary responsibility within his division for:

1. Communications and effective implementation of the Health and Safety Policy.

2. Determination of requirements and submission of capital and budgetary requests for staff, equipment or facilities needed to comply with health and safety standards of state and federal mining laws and to attain the company's safety and production objectives.

3. Development of a total mining plan which includes the establishment of and strict adherence to approved standards for roof support, ventilation, haulage systems, dust and noise control, power distribution, equipment maintenance, fire protection, mine drainage and pollution control, method and percentages of coal extraction, coal preparation, use of explosives, etc.

4. An effective program of skills training and safety-on-the-job orientation for every employee within the organization, giving special attention to inexperienced miners. New employees must complete an approved schedule of mandatory instruction prior to assignment.

5. Developing an organization which is safety conscious and makes a group effort to prevent on-the-job accidents.

6. Effective communications of and requiring strict complaince with;

   * company safety rules and

   * standard safety practices and regulations (both State and Federal).

EXHIBIT V PG 3 OF 4

EMERY MINING CORPORATION **Policies and Procedures**	REF. NO. H&S-001
	PAGE 3 OF 4
	DATE DOCUMENTED 6-10-83
	REVISION:
SUBJECT: HEALTH AND SAFETY POLICY	APPROVED:
	APPROVED: James F. Hamlin Jr.

B. The Corporate Director of Safety will have responsibility for:

1. Interpreting and communicating the provisions of Federal and State mining laws to operations's management.

2. Preparing specific safety objectives for all mines together with a step-by-step action plan for achieving safety objectives.

3. Reviewing all safety practices and standards and then establishing minimums that are realistic and acceptable, company wide.

4. Reporting cited "violations" of Federal and State mining laws and deviations from Emery Mining Corporation's Health and Safety Policy to his superiors, together with recommendations for preventing similar occurrences in the future.

5. The Corporate Director of Safety and his counterparts at each mine have both the authority and responsibility to:

   * withdraw men from any area where imminent danger exists and

   * require corrective action to be taken wherever flagrant violation of mining laws and unsafe practices are observed.

EXHIBIT V PG 4 OF 4

EMERY MINING CORPORATION **Policies and Procedures**	REF NO H&S-001 PAGE 4 OF 4 DATE DOCUMENTED 6-10-83 REVISION
SUBJECT HEALTH AND SAFETY POLICY	APPROVED: W. F. Zeller APPROVED: James F. Hamlin Jr.

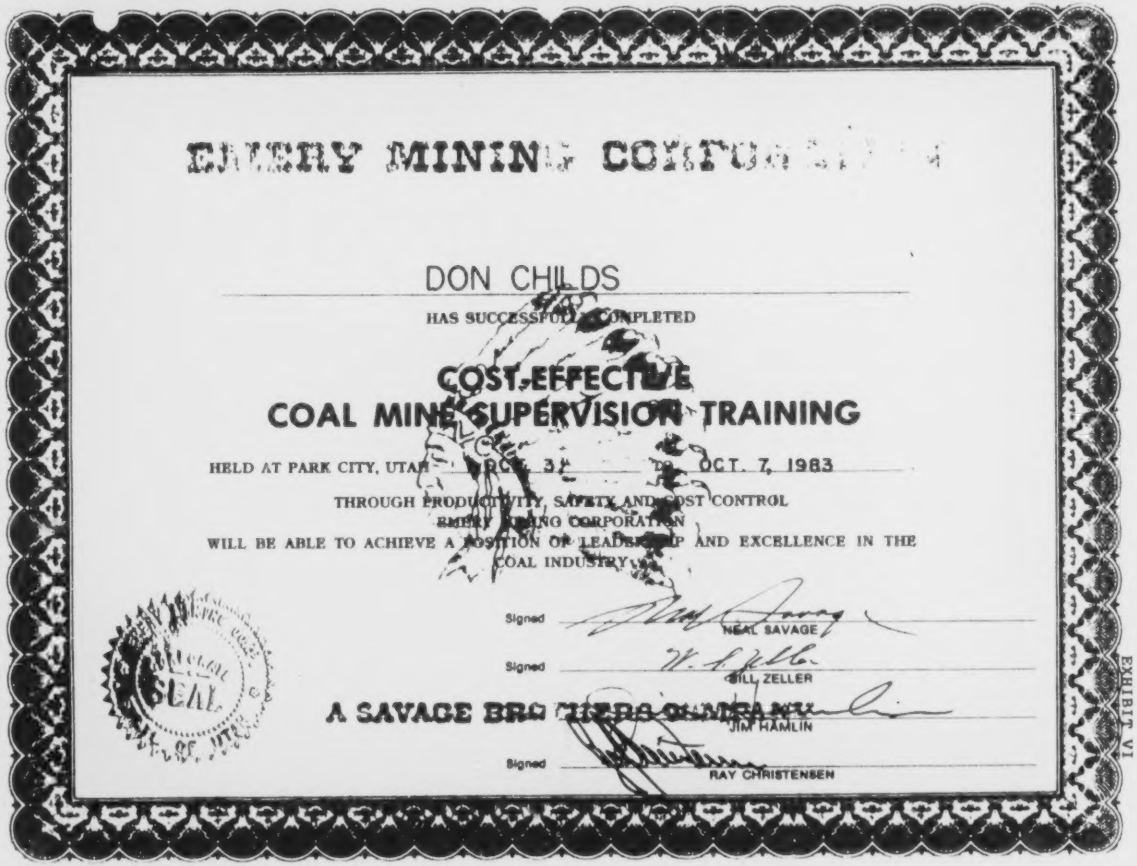
President
Emery Mining Corporation

William F. Zeller
Executive Vice President
& General Manager
Emery Mining Corporation

James F. Hamlin Jr.
Vice President - Operations
Emery Mining Corporation

Evert W Wirden
Director of Safety
Emery Mining Corporation

EXHIBIT VI



EMERY MINING CORPORATION

DON CHILDS

HAS SUCCESSFULLY COMPLETED

COST-EFFECTIVE COAL MINE SUPERVISION TRAINING

HELD AT PARK CITY, UTAH OCT. 3 TO OCT. 7, 1983

THROUGH PRODUCTIVITY, SAFETY AND COST CONTROL
EMERY MINING CORPORATION
WILL BE ABLE TO ACHIEVE A POSITION OF LEADERSHIP AND EXCELLENCE IN THE COAL INDUSTRY.

Signed ______ NEAL SAVAGE

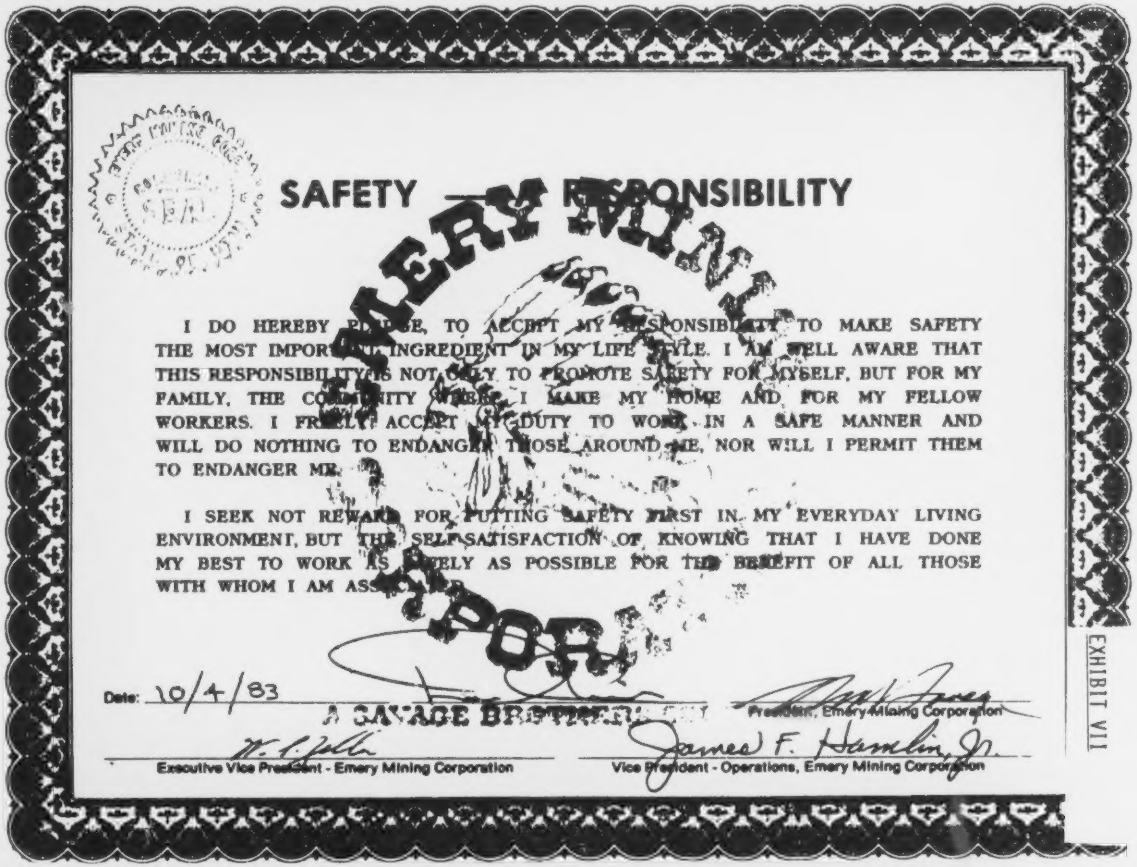
Signed W. L. Zeller ______ BILL ZELLER

A SAVAGE BROTHERS COMPANY ______ JIM HAMLIN

Signed ______ RAY CHRISTENSEN

SEAL

EXHIBIT VII



SAFETY — A RESPONSIBILITY

I DO HEREBY PLEDGE, TO ACCEPT MY RESPONSIBILITY TO MAKE SAFETY THE MOST IMPORTANT INGREDIENT IN MY LIFE STYLE. I AM WELL AWARE THAT THIS RESPONSIBILITY IS NOT ONLY TO PROMOTE SAFETY FOR MYSELF, BUT FOR MY FAMILY, THE COMMUNITY WHERE I MAKE MY HOME AND FOR MY FELLOW WORKERS. I FREELY ACCEPT MY DUTY TO WORK IN A SAFE MANNER AND WILL DO NOTHING TO ENDANGER THOSE AROUND ME, NOR WILL I PERMIT THEM TO ENDANGER ME.

I SEEK NOT REWARD FOR PUTTING SAFETY FIRST IN MY EVERYDAY LIVING ENVIRONMENT, BUT THE SELF-SATISFACTION OF KNOWING THAT I HAVE DONE MY BEST TO WORK AS SAFELY AS POSSIBLE FOR THE BENEFIT OF ALL THOSE WITH WHOM I AM ASSOCIATED.

Date: 10/4/83

A SAVAGE BR[illegible]

President, Emery Mining Corporation

Executive Vice President - Emery Mining Corporation

James F. Hamlin, Jr.
Vice President - Operations, Emery Mining Corporation

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STATEMENTS ABOUT WILBERG MINE - UMWA

The following statements are from transcripts of testimony given by members of the UMWA in hearings held by MSHA during April, 1985.

NOLAN R. BEHUNIN - Mobile Equipment Operator

P.11 - "They (Wilberg Mine management) worked very well with us. Any problems we did find, they done their best to get them rectified."

P.14 - "... down the 1st North area where the fire broke out, I would say things had never looked better than they did. I traveled with one of the MSHA inspectors on his regular just a few days -- it was the first part of December, and the 1st North area, 5 right area, they looked real good."

P. 32 - "I would like to make one thing very clear. The 5 Right area of the mine and the entire 1st North area of the mine did really look good, and I still -- if there was going to be a fire in the Wilberg Mine, I would never have dreamed it was going to be in that area."

DONALD EUGENE COLOGIE - Shuttle Car Operator

P.29 - "They (mine management) were working with the union to try to do everything, I think, to work together real good."

EXHIBIT IX PG 2 OF 2

P.30 - "But most of your rank and file, the majority of them, I'd say ninety percent (90%) of them, were the same way as the company, working together for the betterment of safety and health."

P.32 - "... I think, to answer your question, MSHA, state, UMWA, and company, in the last twelve (12) months, have really worked hard together to make Wilberg a good mine before the fire."

WALTER EDWARD OVIATT -
Health and Safety Representative

P.27 - "I dealt strictly with Dave Bocook. He seemed to be pretty good. If I had a problem and discussed it with him, he would take care of it."

EXHIBIT X PG 1 OF 4

STATEMENTS ABOUT WILBERG MINE - MSHA

The following statements are from transcripts of testimony given by MSHA inspectors in hearings held by MSHA during April, 1985.

ROBERT L. BAKER, Jr. - Coal Mine Inspector

P.24 - "In the last, probably about three years, the conditions of the Wilberg Mine have improved one hundred percent (100%)."

"Q In your opinion, what was Wilberg Mine management's attitude toward compliance with the regulations?

A Very good. Also, the union's attitude was very good. They all just decided they were going to comply with the law, and I thought they were doing an excellent job at it."

ROBERT L. HUGGINS - Mine Inspector

P.31 - "During my inspection, it was really clean, pretty well rock dusted. Overall and general comparisons to the other mines I inspect here, it was one of our better mines."

P.32 - "They (Wilberg Mine management) had real good, you know -- with us -- real good relations. I meant to say with us. I had no problems with them. They were for safety; Mr. Bocook and Cingolani both."

"I remember times where Dick had wrote a violation for a guy riding on the side of an endloader outside. He gave both of them time off for it. We were up there -- I mean they didn't stand for anything like that that was going to get someone hurt. They took care of it."

DICK KIRTNEY JONES _ Coal Mine Inspector

P.42 - "I must say I was impressed with it (Wilberg Mine). The Wilberg Mine, in my opinion, in the last several inspections was overall in very good condition. I believe it was one of our better mines. I was impressed with the way they were taking care of it."

P.43 - "Things I observed when I was in the mines, management was on top of things and trying to see that things were done right."

P.50 - "... there was a big effort made, it appeared to me, to clean up the mine and straighten things up and run a better operation."

FRED L. MARIETTI - Electrical Inspector, MSHA

P.25 - "I would have to say, in my opinion, they were concerned about the safety and the condition of their equipment for reasons being anytime that there was a problem,

EXHIBIT X PG 3 OF 4

they corrected the condition immediately. They made an effort to shut the equipment down, and it was corrected."

P.26 - "I thought the Wilberg Mine, in my opinion, was a very good mine."

JACK MATEKOVIC - Coal Mine Inspection Supervisor

P.62 - "At the time, we were just having a general discussion among ourselves. I think -- I was there; Robert Huggins was there; Lamar Bishop was there. It's possible Don Cologie was there on that shift, but I'm not sure. Wally Oviatt was there, and there was one of the union men. I think his name was Bolts, if I remember right. We were discussing the mine. We were all talking, you know, that the mine was really not that bad a mine. The mine was in good shape. We were really surprised we could have an accident of this magnitude happen at this mine. And Wally made the statement, he said, 'I agree with you. In my district, that that was my model mine.' And I think most of the inspectors in my office said that that was the mine that had the greatest improvement in the last year."

RONALD PERRY PARKIN - Coal Mine Inspector

P.12 - "I noticed a definite improvement in the mine in the cleanliness, the rock dusting, the way the diesel equipment was maintained. Just the overall condition of the mine appeared better."

EXHIBIT X PG 4 OF 4

"I received outstanding cooperation from the Emery Officials, and also, mine personnel. If I found something that needed to be corrected, I immediately brought it to management's attention and Mr. Cingolani, he was the person who traveled with me ninety-nine percent (99%) of the time, he immediately took corrective action to have the violation or safe job procedure taken care of."

P.13 - "At the completion of my inspections, I talked to Mr. Bocook. He asked me if I had any problems regarding my inspection, and naturally, I would relate to him how the inspection was conducted and if I had any problems. I got one hundred percent (100%) cooperation from Mr. Bocook in every way."

CROWELL & MORING
1001 PENNSYLVANIA AVENUE, N. W.
WASHINGTON, D. C. 20004-2505
(202) 624-2500
CABLE: CROMOR
TELECOPIER (XEROX) 202-628-5117
TELECOPIER (RAPICOM) 202-628-5116
W. U. I. INTERNATIONAL 64344
W. U. DOMESTIC 89-2448

TIMOTHY M. BIDDLE
(202) 624-2585

002:wlr
89450-042

May 8, 1987

Mr. Jim Phillips
Minority Investigator
Hart Building -- SH835
Washington, D.C. 20510

Re: Documents in Support of Testimony of
William L. Zeller During Committee Mine Safety Hearing

Dear Jim:

William L. Zeller, who testified during Committee hearings on mine safety on April 27, was asked by Senator Hatch to furnish for the record several documents to which he referred in responding to Senator Hatch's questions.

The following documents are submitted for the record:

1. A February 2, 1984 memorandum from James J. Simonelli to Dave Bocook;
2. Mr. Simonelli's list of recommendations derived from the Des-Bee-Dove fire;
3. A memorandum to mine officials from Bill Zeller reflecting an agenda for discussion of an Emergency Procedure Program suggested by Mr. Simonelli. The handwritten notes on the agenda attached to the memorandum are Mr. Zeller's.

Please let me know if we can furnish you with any further information.

Very truly yours,

Timothy M Biddle

Timothy M. Biddle

Enclosures

cc: Mr. William L. Zeller (w/encs)
James T. Jensen, Esq. (w/encs)

(NOTE: Items Nos. 1 and 2 mentioned above appear at the point in the printed record at which they were submitted for the record.)

Mr. Simonelli:

Over two years after the Wilberg Mine fire, you ~~have~~ now claim that you warned of the possibility of this fire — and you are highly critical of the safety practices at the mines —

But, in February, 1984 you complemented the Wilberg as a "textbook" mine and as an efficient operation with a "safety first" attitude.

If fact, did you not say in a memo to the Wilberg Mine Manager that the Wilberg was "what a coal mine should be"?

EMERY MINING CORPORATION
A SAVAGE BROTHERS COMPANY

April 3, 1984

INTER-OFFICE MEMORANDUM

TO: Jim Atwood
Dave Bocook
Art Bruno
Ray Christensen
Ray Guymon
Jim Hamlin ✓
Morgan Moon
Evert Winder

FROM: Bill Zeller

SUBJECT: EMC Emergency Procedure Program

Please review the items identified on the attached sheets and be prepared to discuss the items in detail at a meeting on April 10, 1984, at 1:00 p.m. in the Conference Room.

The purpose of the meeting is to determine how we can best implement these items which come out of the investigation of the fire at the Beehive Mine.

BZ/sg

Attachment

P.O. Box 310 • Huntington, Utah 84528 • (801) 687-9821

ITEM #1

Maintain an updated and current call list and procedure list, with regular departmental and individual review with their elements and procedures. J. Abbott to do This

ITEM #2

Inspection of gas mask canisters stored at the Central Warehouse.
R. Guymon to give These away - EMC no longer uses Them

ITEM #3

1. Comprehensive employee emergency training program including:
   a. Hands on self rescuer training,
   ↕ Hamlin will have E. Winder work up a program
   b. Fire fighting equipment use and familiarization, and
   c. Familiarization with evacuation and fire drill procedures.
   Hamlin to enforce emergency evacuation drill every 90 days

ITEM #4 E. Winder To recommend procedure To implement next month (May)

1. Comprehensive ~~Extensive~~ management emergency training program including:
   a. The comprehensive employee course content, ITEM 3
   b. Leadership concepts and actions during emergencies dealing with mine fires, floods and explosions,
   c. Fire fighting training films and classes,
   d. Recognizing and correcting potentially dangerous situations,
   e. Use of the EMC Emergency Procedures Manual and call list,
   f. Early assessment of emergencies and prompt communication, and
   g. Organization and control during emergencies.

ITEM #5 Memo to be put out by Hamlin - Notices will be posted at mines

Strict disciplinary action regarding any one expending a fire extinguisher unnecessarily.

ITEM #6 A Brown To write up a procedure and policy

Formulate an unattended diesel equipment policy.

ITEM #7 E. Winder to recommend procedure to implement next month (H

Establish an Emergency Procedure Manual including but not limited to:

1. Define departmental responsibilities and procedures during emergencies.

2. Mine evacuation plans and procedures, fire drill plans and implementation.

3. Keep a detailed log of the actions and the people dealt with during emergencies.

4. Establish a list of emergency items that may be needed in certain emergencies and be prepared to deliver those items to the needed location.

5. Keep a record of material used and continue to stay within the prescribed system and procedures during emergencies.

6. Establish a communication system and procedure to deal with emergencies.

7. Coordinate and organize functions and do not allow people to circumvent the system.

8 ~~10.~~ Establish guidelines for fighting and sealing a mine fire.

9 ~~11.~~ Establish guidelines and procedures for scheduling of crews working under apparatus during emergencies.

12. Fix, fight, flee - when do we do which?

1 1~~3.~~ Dealing with governmental, regulatory agencies and the union during emergencies.

ITEM #8 Each month, Gen. Mine Fore. of each mine will write memo to Mine Engineering and detail every ventilation change made during month.

Maintenance of current and accurate mine maps.

ITEM #9 Completed - E. Winder to send me completed corporate plan

Planning, placement and inspection of fire extinguishers on mobile equipment and key locations throughout the system (standardization).

ITEM #10 Completed - E. Winder to send me completed corporate plan

Task training in the use of a pre-operational check list.

Senator HATCH. Mr. Lauriski, we will turn to you.

Mr. LAURISKI. Mr. Chairman and other distinguished Members of this Committee, we at Utah Power & Light appreciate the opportunity to testify about, and hopefully contribute to, the cause of mine health and safety.

Beginning in 1972, Utah Power hired independent contractors to remove the coal from its mines. Emery Mining Corporation was that independent contractor retained to operate the mine at the time the Wilberg Mine caught fire. Utah Power assumed management of the mine operations in April of 1986. I was involved in mine safety both with Emery Mining and now with Utah Power, and I was personally acquainted with many of the employees of Emery Mining who died in the fire.

The memory of the 1984 tragedy at the Wilberg Mine is painful to those of us who shared a workplace and a community with the victims and their families. But from that memory, we can all draw an extra measure of dedication to the cause of safety.

In our testimony today, we would like to address what was done for safety and what can be done. Those of us in the mining community have long recognized that to achieve an accident-free work environment, there must be a conscious commitment of all who take a role in mining. Those who design, work in and regulate the mines must be highly skilled and vigilant. Not one of these factors alone can solve the problem—not labor, not management, not law. But together, we can and do make progress.

The task therefore is not creating additional regulation, but having a thorough understanding of the existing regulations and seeking more effective ways of detecting and correcting and preventing unsafe conditions and acts.

We resolved that the Wilberg tragedy would not be compounded by inaction or excuses. Our progress has been real and is dedicated to those who lost their lives and to those who labor today in our mines.

Improvements in safety in the Emery-run mines before the fire were impressive. The Wilberg fire therefore came as a great shock to all of us.

The investigation into the cause of the Wilberg Mine fire is not yet complete on anyone's part. Although we at Utah Power, as owner, have been excluded from the "official" investigation, we realized long ago that the specific cause of this tragedy may never be known. With that in mind, Utah Power and Emery Mining set out to review what was in place with the assumption that everything could be improved. Here are some of the highlights of the changes that have been made.

We have begun a program to try to minimize the number of portable underground air compressors and move toward centralized, fireproofed compressor stations. In the interim, all compressors have been equipped with automatic fire suppression devices and adequate ventilation across the compressors when in use.

We have installed heavy-duty six-inch steel water lines, heated at strategic locations to prevent freezing, and with quick-operating fire hydrants and standby diesel generators and electric pumps to keep the water flowing even if the main power is lost. An external and plentiful water source now feeds the system with the large flows of water that are needed.

We have instituted a program of hands-on training on the use of self-contained self-rescuers for all of our employees. This program is conducted twice each year and exceeds the industry standard and MSHA requirements. The training emphasizes the same procedure with the same type of equipment that would actually be used in an emergency.

We have installed mine-wide environmental monitoring systems. The new systems can detect fire with sensors strategically located throughout the mines that "sniff" for extremely low quantities of methane and carbon monoxide, which allow almost instant warnings to be sent to control panels that are constantly monitored by experienced mining employees.

We have increased the training of our employees on fire-fighting and evacuation beyond the routines that Federal regulations currently require. We have placed fire doors at strategic locations throughout the mines that can quickly isolate an area on fire from the rest of the mine. All of our diesel equipment has been provided with fire suppression systems, and all of our belt drives—that is, large electric motors that pull the belts—have been equipped with water sprinkling systems. These systems have been tested and have been proven to be the most effective means to control a fire.

Each mine has also been provided with a large-capacity foam generator that would be used to smother a fire through the elimination of oxygen. We have also developed a new program to train our senior management in emergency response and crisis management.

Aluminum, with the approval of MSHA, has at times been used to construct overcasts—that is, structures used to separate air courses at intersections. Aluminum overcasts buckled from the heat of the Wilberg fire, allowing the ventilation paths to short-circuit. No new aluminum overcasts will be installed in any of our mines, and all existing aluminum overcasts have been or are being replaced.

While Utah Power has gone to great lengths to provide these additional measures of protection, we also recognize that without good employee training these devices cannot do what they are designed to do. Our training program is our highest priority, and we are regularly improving upon it.

We at Utah Power have made a strong commitment to each other to have the safest operating coal mines in the country, and this commitment goes beyond fire prevention and protection.

Despite the charges of some, the two-entry mining system that was used in the Wilberg Mine was not the cause of the deaths of the miners. Utah Power is committed to a mining system design that allows maximum worker protection from inherent mine hazards. In our mines, this requires the use of a two-entry mining system for longwall panel development.

While there has been much controversy over the use of the two-entry systems in the Western United States, one look at the conditions in our Western mines will convince you of the absolute need for such systems in our area.

We remain committed, due to our geologic conditions, to continue to mine with the two-entry system. By not adhering to that commitment, we increase the chance that an employee will be killed or seriously injured by falling roof or rib materials. This is our sole reason for resisting the use of three or more entries in our longwall panel development. Industry and Government agencies have exhaustively studied the merits of limited-entry mining, and all of these studies have shown that where operators are faced with certain geologic conditions such as deep-cover, multiple-seam mining, and massive sandstone roof, as well as other unique mining conditions, limited-entry mining is the safest way to combat these hazards.

In our area, all coal mine operators employing longwall mining have engaged in or are preparing to engage in two-entry mining systems for longwall panel development to provide a safer system of mining for their miners. It is no wonder. History has shown the tragedies caused by catastrophic ground control problems in multiple-entry systems. Statistics show a higher frequency of roof falls (which, by the way, is the leading cause of death of coal miners in this country) in multiple-entry systems than in two-entry systems.

More miners have died as a result of roof falls than fires. At one mine in Utah, the total of all fatalities from ground failure approached the fatalities of the Wilberg fire, although the deaths were one or two at a time and caused no national attention. Who knows what these statistics may have shown had they not changed to a two-entry system.

We have all the evidence one needs to see that by eliminating two-entry systems, Western coal mine safety will take one giant step backward. We have both three-entry and two-entry systems in our mines, and the difference in the ability to control the roof, avoid injuries, and keep entries open is dramatic. Two-entry prevails every time.

We invite you to come to our mines in Utah and see for yourselves. One such visit will dispel any doubts about the use of a two-entry system.

Do not let the critics use emotion to blame a safer and more viable method of mining on the deaths of those miners who lost their lives in the Wilberg Mine fire, but rather, let us look at what we can do to find what caused the deaths and improve and enhance the safety and health of our employees to prevent not only catastrophic occurrences but all occurrences which cause death, injury and illness.

Attached to this statement are statistics as well as studies which emphasize the safety importance of the two-entry system.

I thank you.

Senator HATCH. Thank you, Mr. Lauriski.

[The prepared statement of Mr. Lauriski, with attachments, follows:]

STATEMENT OF DAVE D. LAURISKI
DIRECTOR, HEALTH, SAFETY AND TRAINING
FOR UTAH POWER & LIGHT COMPANY, MINING DIVISION
BEFORE THE SENATE LABOR AND HUMAN RESOURCES COMMITTEE
CONCERNING THE WILBERG MINE FIRE

APRIL 27, 1987

Mr. Chairman, and other distinguished members of this committee, we at Utah Power & Light appreciate the opportunity to testify about, and hopefully contribute to, mine health and safety. To help you understand our mining system, we have some visual aids that we will show you during my oral statement.

Utah Power is an electric utility that serves over 500,000 customers in Utah, southeastern Idaho and southwestern Wyoming. Utah Power generates most of its power from the burning of coal.

Utah Power has a history of involvement in coal mining which started in 1972, when we purchased a small coal mine in Emery County to provide a reliable source of coal to power our plants. In the 70s, we built new, large-capacity plants in Utah's coal country and purchased other coal mines, including Wilberg, to supply the massive amounts of coal needed to power these new plants.

But Utah Power was not a coal-mining company. We hired independent contractors to remove the coal from the mines. Emery Mining Corporation was the independent contractor retained to operate the mines at the time the Wilberg Mine caught fire. The Wilberg fire caused Emery Mining to lose a substantial portion of its liability insurance coverage and because of this loss of coverage, we assumed management of mine operations in April 1986.

I was involved in coal mine safety, both with Emery Mining and now with Utah Power. I was personally acquainted with many of the employees of Emery Mining who died in the fire.

The memory of the 1984 tragedy at the Wilberg Mine is painful to those of us who shared a workplace and a community with the victims and their families. But from that memory we all can draw an extra measure of dedication to the cause of safety. In our testimony today, we would like to address what was done for safety and what can be done.

Those of us in the mining community have long recognized that to achieve an accident-free work environment, there must be a conscious commitment of all who take a role in mining. Those who design, work in, and regulate mines must be highly skilled and vigilant. Not one of these factors alone can solve the problem; not labor, not management, not law. But together, we can and do make progress.

An atmosphere of recrimination is counterproductive to improving mine safety. For this reason, we believe that MSHA's preliminary report and the controversy surrounding it fall far short of the goals that concern this committee. For example, MSHA and the UMWA concluded inspections of the Wilberg Mine less than one week before the fire. Neither entity found a single one of the 34 alleged violations issued by MSHA at the conclusion of their investigation into the Wilberg fire. The task, therefore, is not so much creating additional regulation, but having a thorough understanding of the existing regulations and seeking more effective ways of detecting, correcting and preventing unsafe conditions and acts, including those not covered by any rule or regulation.

We resolved that the Wilberg tragedy would not be compounded by inaction or excuses. Our progress has been real, and is dedicated to those who lost their lives and to those who labor today in our mines. Utah Power has recently reached an out of court settlement with the survivors of the 27 Wilberg victims. An attorney for the families said that this settlement was possible because the families saw the progress we had made in mine safety.

Improvements in safety in the Emery-run mines before the fire were impressive. The Wilberg fire, therefore, came as a great shock to all of us.

As an employee of Emery Mining, I was heavily involved in the extraordinary firefighting and rescue efforts, which began on the evening of December 19, 1984 and continued until Sunday, December

23, 1984. During this effort, rescue workers (both management and rank-and-file miners), members of the Mine Safety and Health Administration and the community at large exhibited great courage and compassion. The willingness of people to serve was amazing.

As to the Emery Mining recovery, the goal was to start as soon as safely possible and return the bodies of the victims to their families. There was also concern with restoring the mine operations to assure that hundreds of miners left unemployed by the fire could return to work.

The recovery teams first reached 5th Right on November 2, 1985. By November 12, 25 of the 27 victims had been removed and returned to their families. Exploration continued to 6th Right and the remaining two victims were located and recovered on December 16, 1985. In all, recovery crews spent 290,000 total manhours (with 4,590 of those hours wearing oxygen apparatus), and built 141 temporary seals, 92 permanent seals and 28 airlock seals. They recovered 54.2 miles of underground mine workings. They injected over 50 million cubic feet of inert gas, including pioneering of the use of a nitrogen generated foam used to seal mine entries in front of recovery crews as recovery work advanced. This recovery work was accomplished without a single serious accident to any underground recovery team worker.

The investigation into the cause of the Wilberg Mine Fire is not yet complete on anyone's part. Although we at Utah Power, as owner, have been excluded from the "official" investigation, we realized long ago that the specific cause of the tragedy may never be known. With that in mind, Utah Power and Emery Mining set out to review what was in place with the assumption that everything could be improved. Here are some of the highlights of changes that have been made:

Fire-proofing compressors. We have begun a program to try to minimize the number of portable underground air compressors and move toward centralized, fire-proofed compressor stations. In the interim, all compressors have been equipped with automatic fire suppression devices and adequate ventilation across the compressors when in use.

More reliable water supply for fire fighting. We have installed heavy-duty 6" steel water lines (heated at strategic places to prevent freezing) with quick operating fire hydrants and standby diesel generators and electric pumps to keep the water flowing even if the main power is lost. An external and plentiful water source now feeds the system with the large flows of water that are needed.

Mandatory hands-on training with self rescuers. We have instituted a program of hands-on training on the use of self-contained self rescuers for all of our employees. This program is conducted twice each year and exceeds the industry standard and MSHA requirements. The training emphasizes the same procedure with the same type of equipment that would actually be used in an emergency.

Electronic monitoring of entire mine environment. We have installed mine-wide environmental monitoring systems that will eventually incorporate the older fire detection system. The old system, known as the CBFD relies upon a heat-sensing element to set off alarms. The new systems can detect fire with sensors strategically located throughout the mines that "sniff" for extremely low quantities of methane and carbon monoxide. Heat sensors alone were good in their day, but advances in technology now allow almost instant warnings to be sent to control panels that are constantly monitored by experienced employees, most of whom have educational backgrounds in mining engineering or computer science.

Training to handle actual emergencies. We have increased the training of our employees on fire fighting and evacuation beyond the routines that federal regulations currently require. We conduct drills that simulate actual emergency situations, involving both in-mine and surface employees. We also conduct unannounced, mine-wide fire fighting and evacuation drills on all shifts and at all mines.

Fire doors. We have placed fire doors at strategic locations throughout the mines that can quickly isolate an area on fire from the rest of the mine.

Fire suppression on equipment. All mobile diesel equipment has been provided with manually-activated fire suppression systems and all unattended diesel equipment has been provided with automatically-activated fire suppression systems. All belt drives (large electric motors that pull the belts) have been equipped with water sprinkling systems. These systems have been tested and have proven to be the most effective means to control a fire.

Foam generators. Each mine has been provided with a large-capacity foam generator to smother a fire through the elimination of oxygen. Sufficient foam concentrate is immediately on hand to maintain fire fighting efforts for 24 hours, and more can be obtained quickly.

Crisis management. A new program has been developed to train our senior management in emergency response and crisis management.

Mine rescue stations. Mine rescue stations equipped with full complements of rescue equipment have been set up at each mine site to assure rapid response to an emergency situation.

Overcast construction. Aluminum, with the approval of MSHA, has at times been used to construct overcasts (structures used to separate air courses at intersections). Aluminum overcasts buckled from the heat of the Wilberg fire, allowing ventilation paths to short circuit. No new aluminum overcasts will be installed in any of our mines, and all existing aluminum overcasts have been or are being replaced.

Employee training. While Utah Power has gone to great lengths to provide these additional measures of protection, we also recognize that without good employee training, these devices cannot do what they are designed to do. We therefore began a training program that includes all of the new technology. This program is our highest priority and we are regularly improving it.

A well known and respected mine fire expert (William B. Jamison) recently inspected our mines and summarized his report by saying:

> "Both the Cottonwood and Deer Creek Mines have the best fire protection and fire fighting facilities which I have seen.
>
> "The Utah Power & Light Company Mining Division management have shown a sincere desire and dedication to have these superior facilities. I am impressed by the attitudes of employees who show that they intend to maintain these facilities and to know how to use them, if that should be needed."

Utah Power has made a strong commitment to its employees to have the safest operating coal mines in the country. This commitment goes beyond fire prevention and protection. We have addressed other hazards and have devised solutions. For example:

(1) We have purchased state-of-the-art roof bolting machines which provide the operators with maximum protection from falls of coal and rock;

(2) We have converted continuous mining machines to remote-control operation, helping to minimize the risk to operators and helpers from roof falls;

(3) We are replacing electrically-operated track vehicles with highly efficient and safe diesel equipment;

(4) We have developed a stringent health and safety policy with a mandate that a safety commitment must be shared by all employees; and

(5) We have developed employee safety rules, applicable to both hourly and salaried employees, that impose meaningful sanctions on violators.

Safety dictates the use of two-entry mining in our mines. Despite the charges of some, the two-entry mining system that was used in the Wilberg Mine was not the cause of the deaths of the miners. Utah Power is committed to a mining system design that allows maximum worker protection from inherent mine hazards. In our mines, this requires the use of the two-entry mining system for longwall panel development. While there has been much controversy over the use of two-entry systems in the western United States, one look at the conditions in our western mines will convince you of the absolute need for such systems in our area. We remain committed, due to our geologic conditions, to continue to mine with a two-entry system. By not adhering to that commitment, we increase the chance that an employee will be killed or seriously injured by falling roof or rib materials. This is our sole reason for resisting the use of three or more entries in our longwall panel development. Industry and government agencies have exhaustively studied the merits of limited entry (two entries or less) mining systems. All of these studies have shown that where operators are faced with certain geologic conditions (such as deep cover, multiple seam mining and massive sandstone roof -- all of which exist at our mines) or other unique mining conditions, limited entry mining is the safest way to combat these hazards.

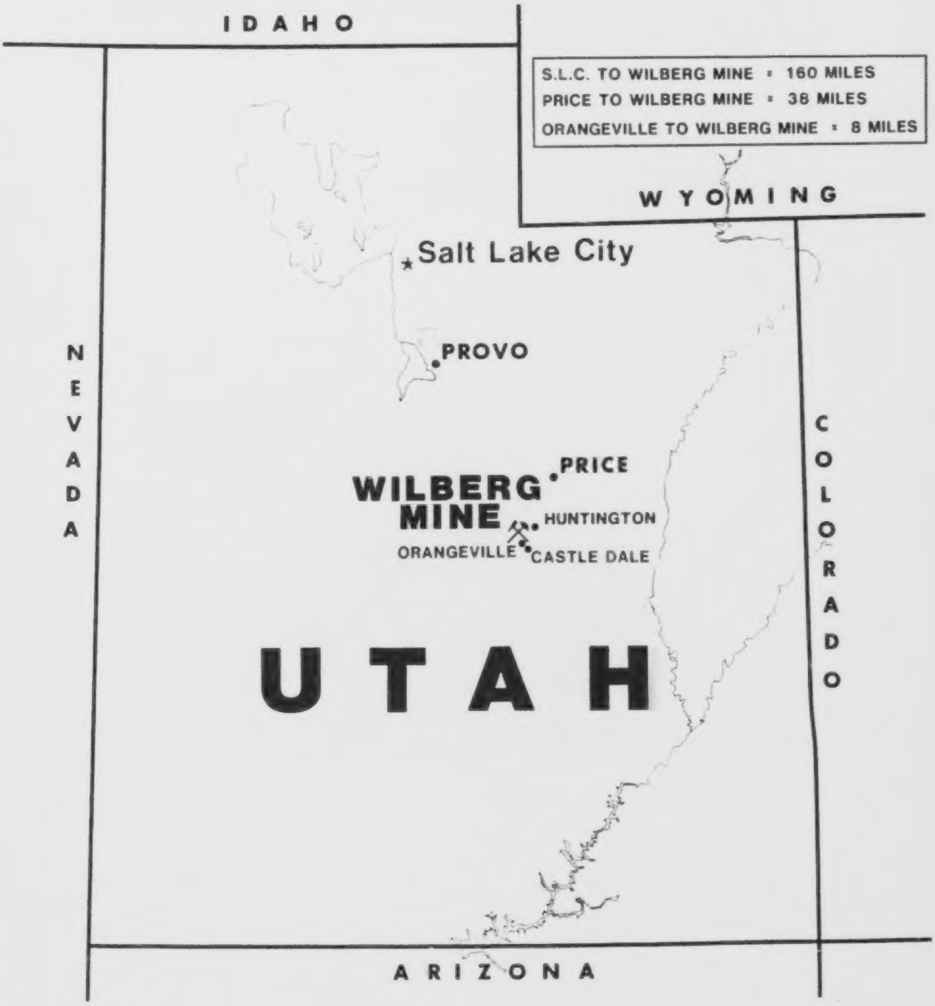
In our area, all coal mine operators employing longwall mining have engaged in, or are preparing to engage in, two-entry mining systems for longwall panel development to provide a safer system of mining for their miners. It's no wonder! History has shown the tragedies caused by catastrophic ground control problems in multiple-entry systems. Statistics show a higher frequency of roof falls (the leading cause of death in underground mines) in multiple entry systems than in two entry systems.

More miners have died as a result of roof falls than fires. At one mine in Utah, the total of all fatalities from ground failure approached the fatalities from the Wilberg fire, although the deaths were one or two at a time and caused no national attention. Who knows what these statistics may have shown had they not changed to a two-entry system. We have all the evidence one needs to see that by eliminating two-entry systems, western coal mine safety will take one giant step backward. We have both three-entry and two-entry systems in our mines. The difference in the ability to control the roof, avoid injuries and keep entries open is dramatic. Two-entry prevails every time. We invite you to come to our mines in Utah and see for yourselves. One such visit will dispell any doubts about the use of a two-entry system.

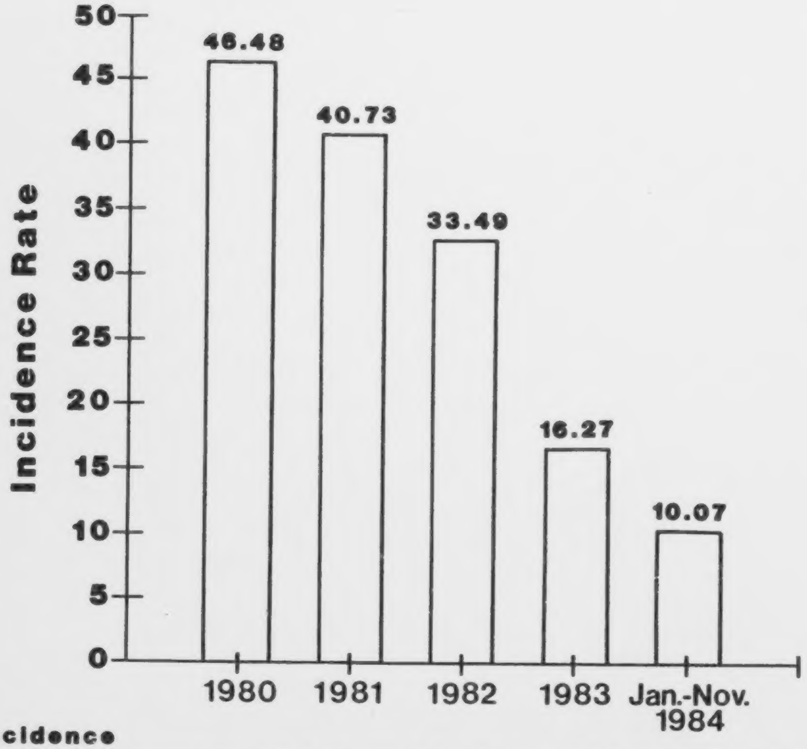
Don't let the critics use emotion to blame a safer and more viable method of mining on the deaths of those miners who lost their lives in the Wilberg Mine Fire. Rather, let us look at what we can do to find what caused the deaths and improve and enhance the safety and health of our employees to prevent not only catastrophic occurrences but all occurrences which cause death, injury and illness. Attached to this statement are statistics as well as studies which emphasize the safety importance of the two-entry system.

We again appreciate having this opportunity to appear before this Committee.

GENERAL LOCATION MAP

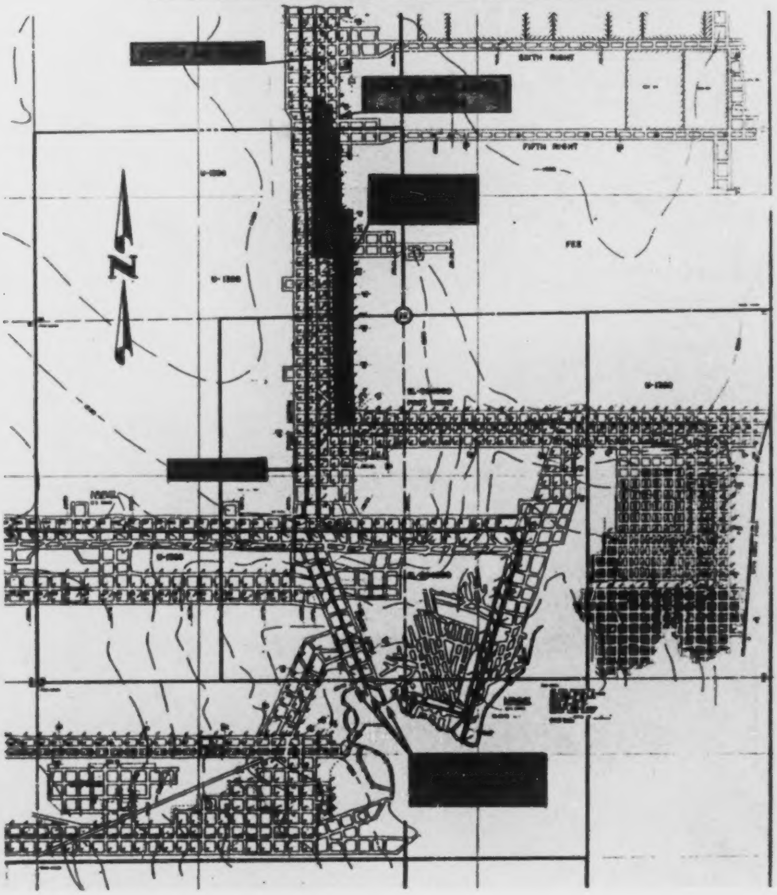

IDAHO
S.L.C. TO WILBERG MINE = 160 MILES
PRICE TO WILBERG MINE = 38 MILES
ORANGEVILLE TO WILBERG MINE = 8 MILES
WYOMING
Salt Lake City
PROVO
NEVADA
COLORADO
PRICE
WILBERG MINE
HUNTINGTON
ORANGEVILLE
CASTLE DALE
UTAH
ARIZONA

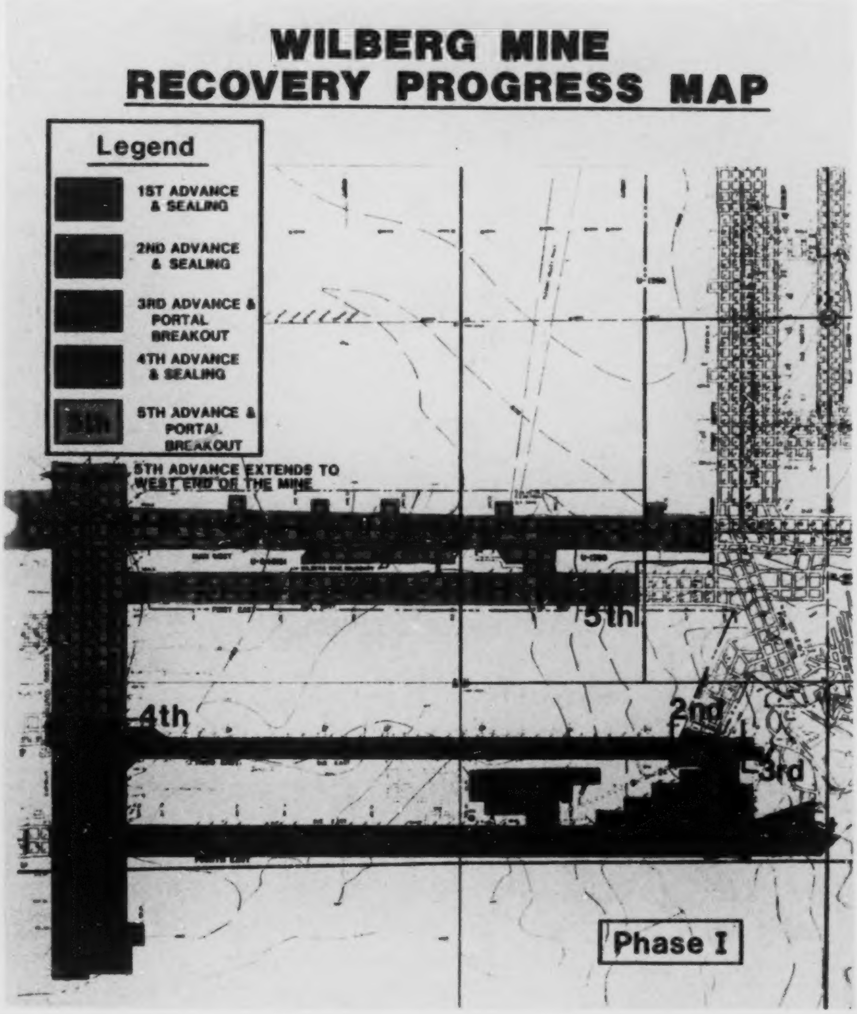
WILBERG MINE
INCIDENCE RATE



Incidence Rate- $\frac{\text{Number of Actual Injuries X 200,000 Man Hours}}{\text{Total Number of Man Hours Worked}}$

WILBERG MINE FIREFIGHTING MAP

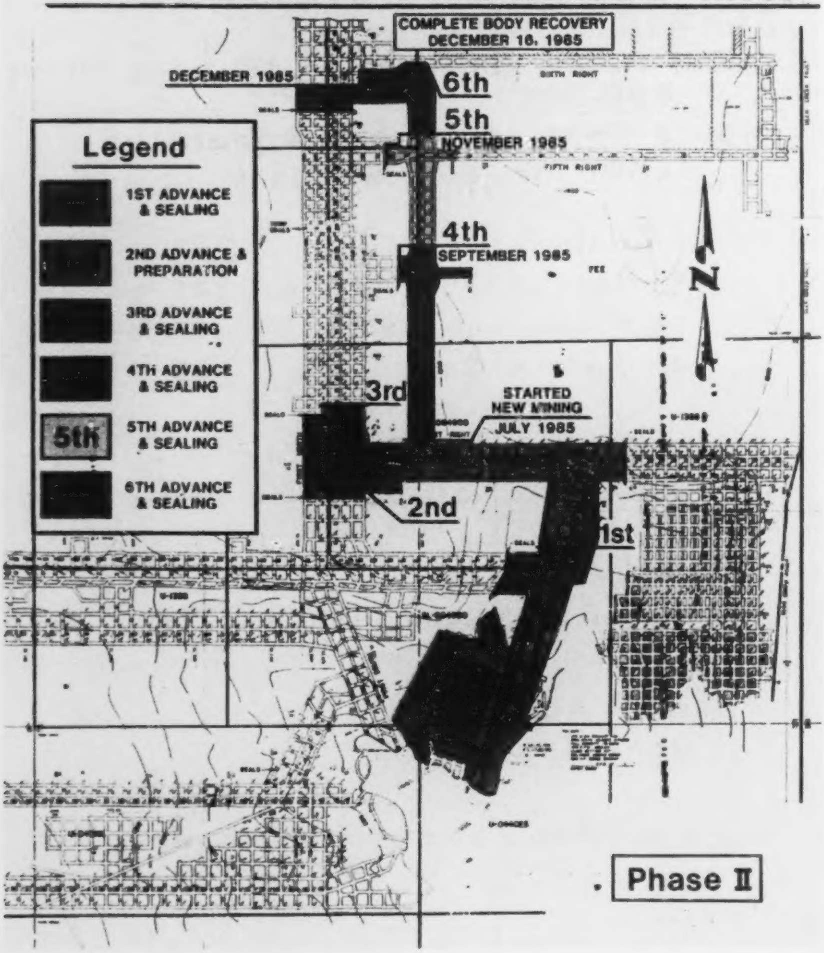

SIXTH RIGHT
FIFTH RIGHT
N
FEE



WILBERG MINE RECOVERY PROGRESS MAP

Legend
1ST ADVANCE & SEALING
2ND ADVANCE & SEALING
3RD ADVANCE & PORTAL BREAKOUT
4TH ADVANCE & SEALING
5th
5TH ADVANCE & PORTAL BREAKOUT
5TH ADVANCE EXTENDS TO WEST END OF THE MINE
5th
4th
2nd
3rd
Phase I

WILBERG MINE RECOVERY PROGRESS MAP


COMPLETE BODY RECOVERY
DECEMBER 16, 1985
DECEMBER 1985
6th
SIXTH RIGHT
5th
NOVEMBER 1985
FIFTH RIGHT
4th
SEPTEMBER 1985
FEE
N
3rd
STARTED
NEW MINING
JULY 1985
2nd
1st
SEALS
Legend
1ST ADVANCE & SEALING
2ND ADVANCE & PREPARATION
3RD ADVANCE & SEALING
4TH ADVANCE & SEALING
5th
5TH ADVANCE & SEALING
6TH ADVANCE & SEALING
Phase II

WILBERG MINE

FIRE RECOVERY STATISTICS

RESCUE TEAMS

a.) Total Hours Recovering Wilberg Mine:
290,000

b.) Hours Wearing Oxygen Apparatus
4590 or 574 Shifts

c.) Total Seals Built	261
1) Temporary Seals	141
2) Permanent Seals	92
3) Airlock Seals	28

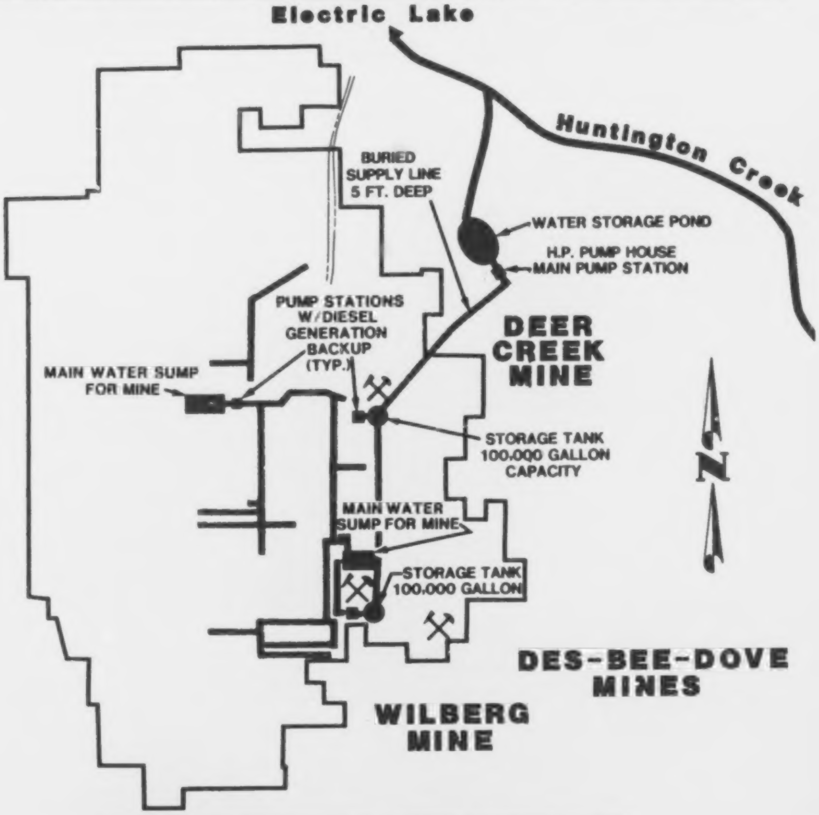
d.) Gases Injected (CO_2, N_2)
50,000,000 Cubic Feet

Nitrogen Generated Foam Injected
(Novel Technique) 135,000 Cubic Feet

e.) Serious Accidents
None (0)

f.) Miles of Mine Roadways Recovered
54.2 Miles

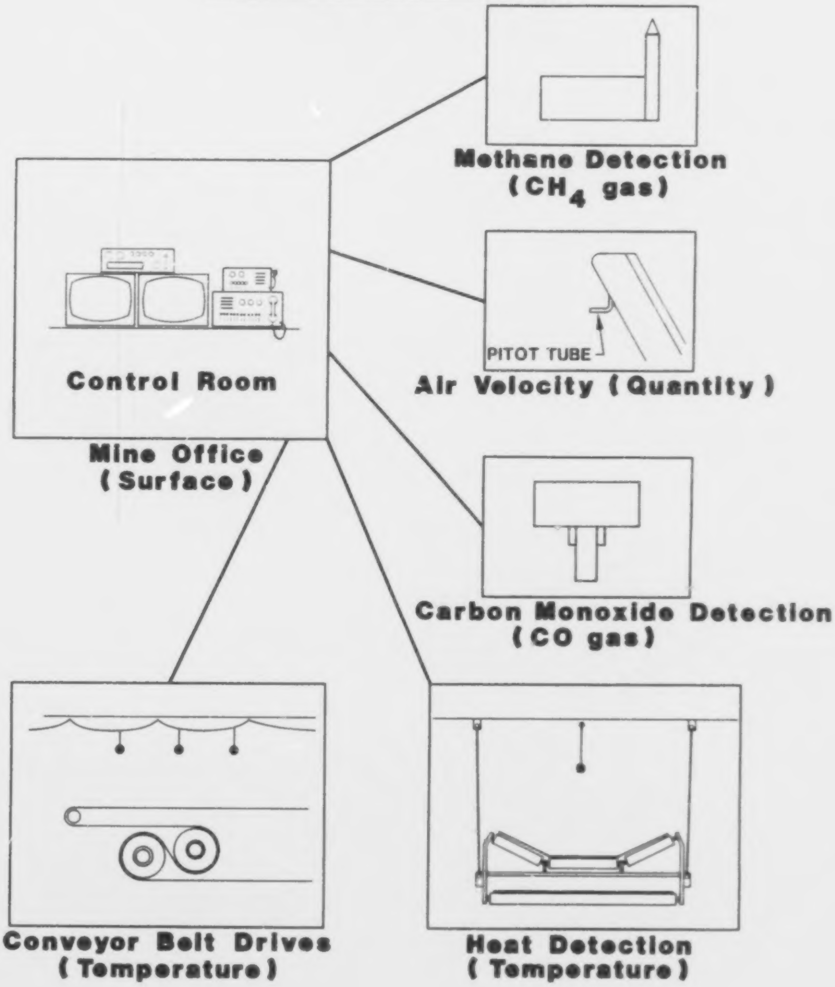
U.P.&L.CO. MINING DIVISION


Electric Lake
Huntington Creek
BURIED SUPPLY LINE 5 FT. DEEP
WATER STORAGE POND
H.P. PUMP HOUSE MAIN PUMP STATION
PUMP STATIONS W/DIESEL GENERATION BACKUP (TYP.)
MAIN WATER SUMP FOR MINE
DEER CREEK MINE
STORAGE TANK 100,000 GALLON CAPACITY
N
MAIN WATER SUMP FOR MINE
STORAGE TANK 100,000 GALLON
DES-BEE-DOVE MINES
WILBERG MINE

WATER SUPPLY & BACKUP SYSTEM

U.P.&L.CO. MINES

Mine Monitoring


Methane Detection
(CH_4 gas)
Control Room
PITOT TUBE
Air Velocity (Quantity)
Mine Office
(Surface)
Carbon Monoxide Detection
(CO gas)
Conveyor Belt Drives
(Temperature)
Heat Detection
(Temperature)

UTAH POWER & LIGHT COMPANY
MINING DIVISION

EMERGENCY PREPAREDNESS PROGRAM

This program covers the following areas:

Notification Procedures and Emergency Responsibilities;

Fires, Explosions and Other Unusual Occurrences

Bomb Threats

Emergency Evacuation Plans (Mine Specific)

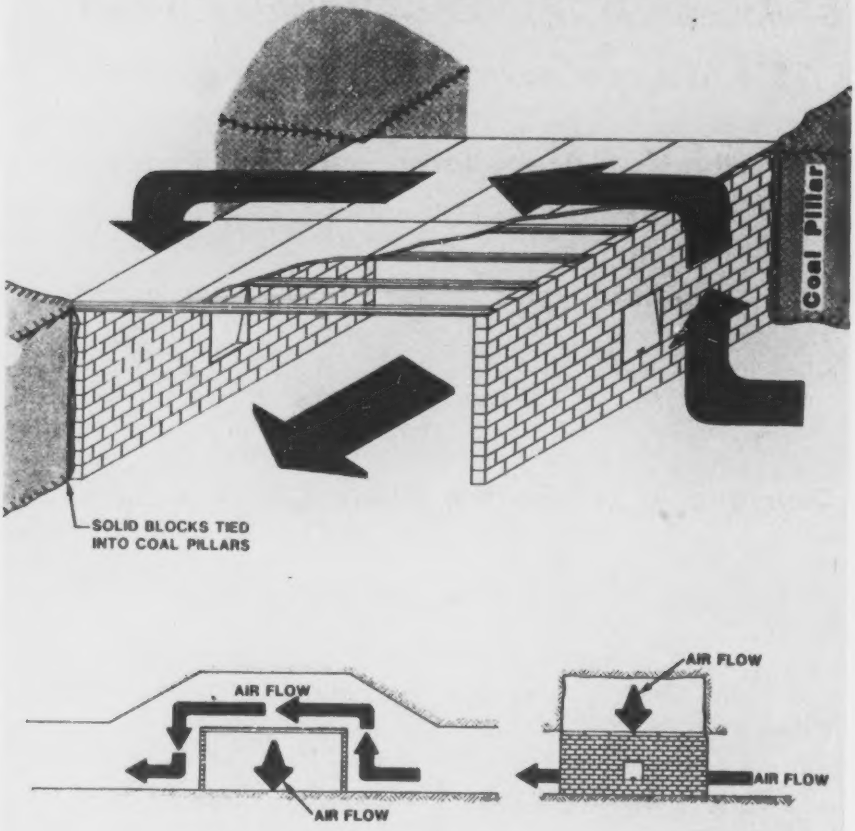
Fire Drills

Escapeway Drills

Emergency Materials Supply

January, 1987

TYPICAL VENTILATION OVERCAST


Coal Pillar
SOLID BLOCKS TIED INTO COAL PILLARS
AIR FLOW
AIR FLOW
AIR FLOW
AIR FLOW

"Both the Cottonwood & Deer Creek mines have the best fire protection & fire fighting facilities which I have seen.

The Utah Power & Light Company Mining Division management have shown a sincere desire & dedication to have these superior facilities. I am impressed by the attitude of employees who show that they intend to maintain these facilities & to know how to use them, if that should be needed."

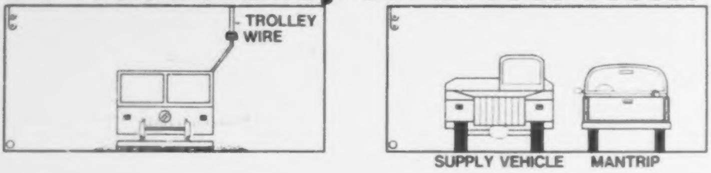
Will B. Jamison

U.P.&L.CO. MINES

Safety Oriented-Equipment Improvements

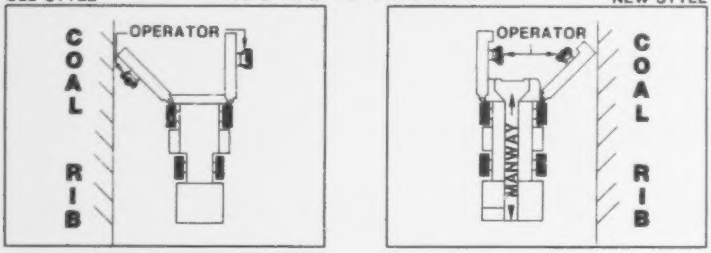
Old Style **New Style**

Rail Track Trolley Vs. Diesel F.S.V.'s


TROLLEY WIRE
SUPPLY VEHICLE
MANTRIP

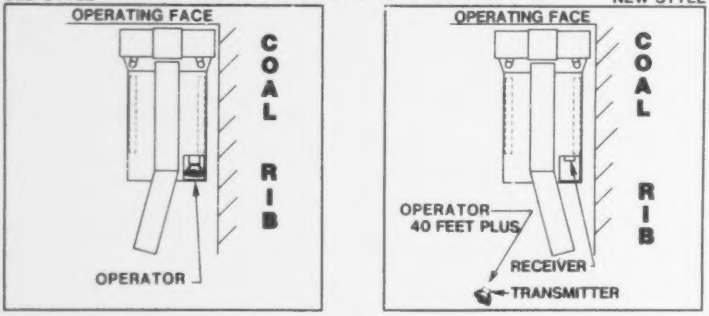
Roof Bolters

OLD STYLE NEW STYLE


OPERATOR
COAL RIB
OPERATOR
MANWAY
COAL RIB

Continuous Miners

OLD STYLE NEW STYLE


OPERATING FACE
COAL RIB
OPERATOR
OPERATING FACE
COAL RIB
OPERATOR
40 FEET PLUS
RECEIVER
TRANSMITTER

Utah Power & Light Company
Mining Division

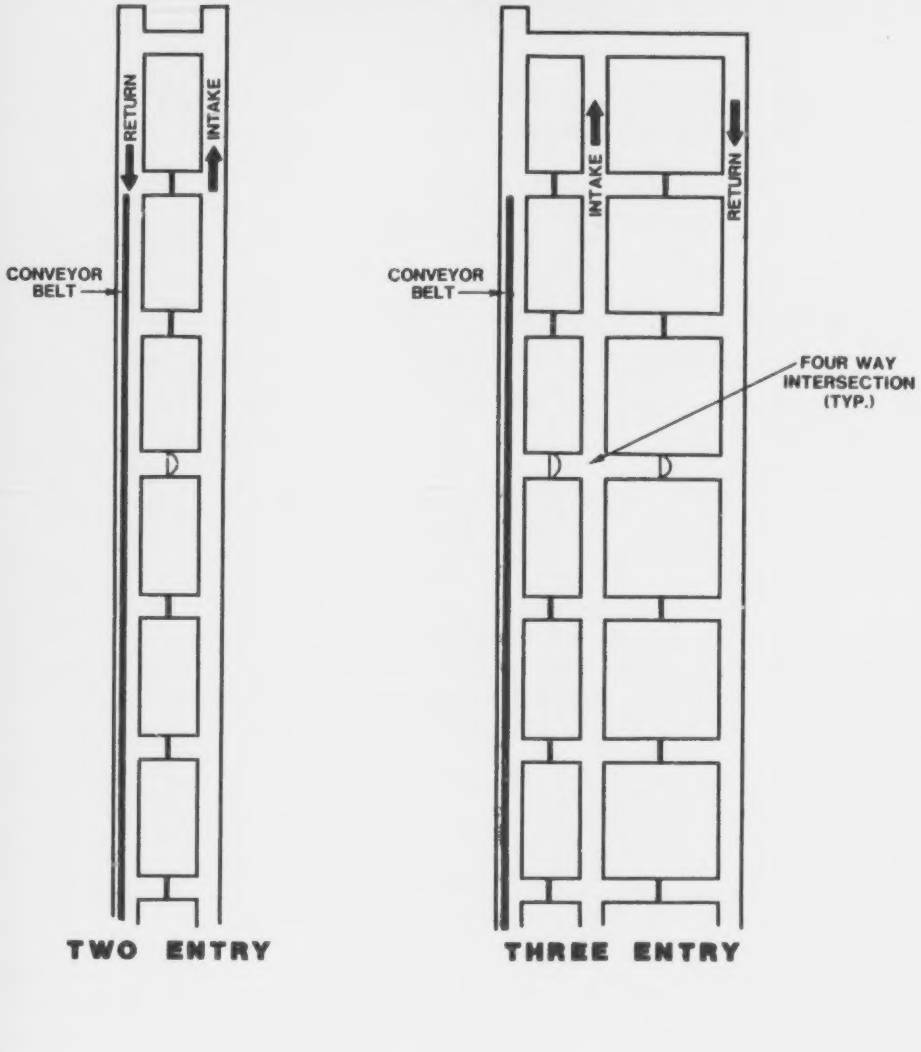
HEALTH & SAFETY POLICY

OBJECTIVE: To Provide a Safe and Healthy Work Environment for all Employees and to Operate Our Facilities in the Safest Manner Possible.

SCOPE: Utah Power & Light Company's Mining Division Regards the Safety and Health of its Employees as the Matter of Highest Priority. It is the Division's Policy to Provide and Maintain a Safe and Healthy Workplace for all Employees.

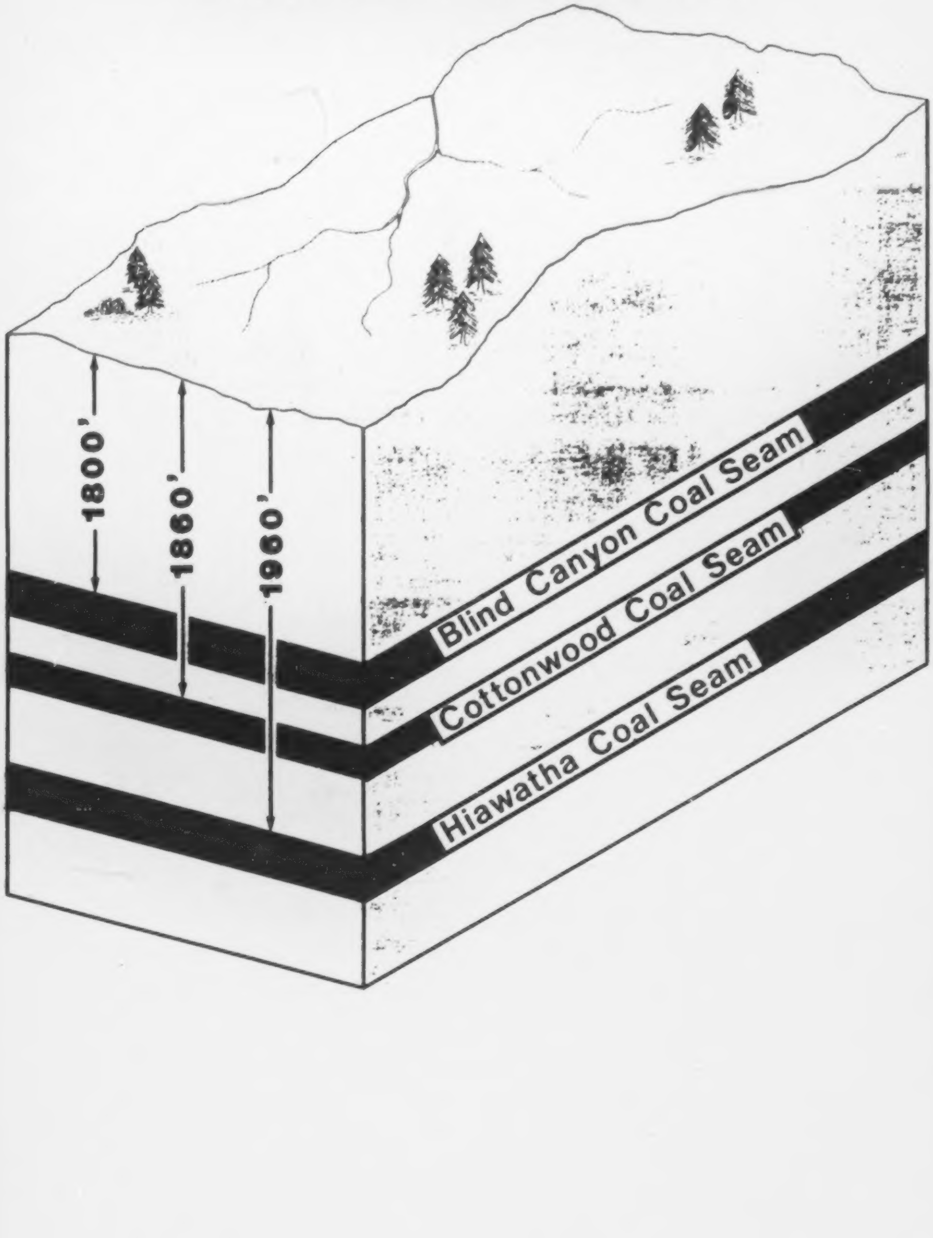
The Goal of the Mining Division is to Make Our Mines the Safest in the Country Which Will Require the Dedicated Effort of all Employees in Order for us to Attain that Goal.

COMPARISON OF AREAS REQUIRING SUPPORT AND OTHER FACTORS TWO ENTRY VS. THREE ENTRY DEVELOPMENT

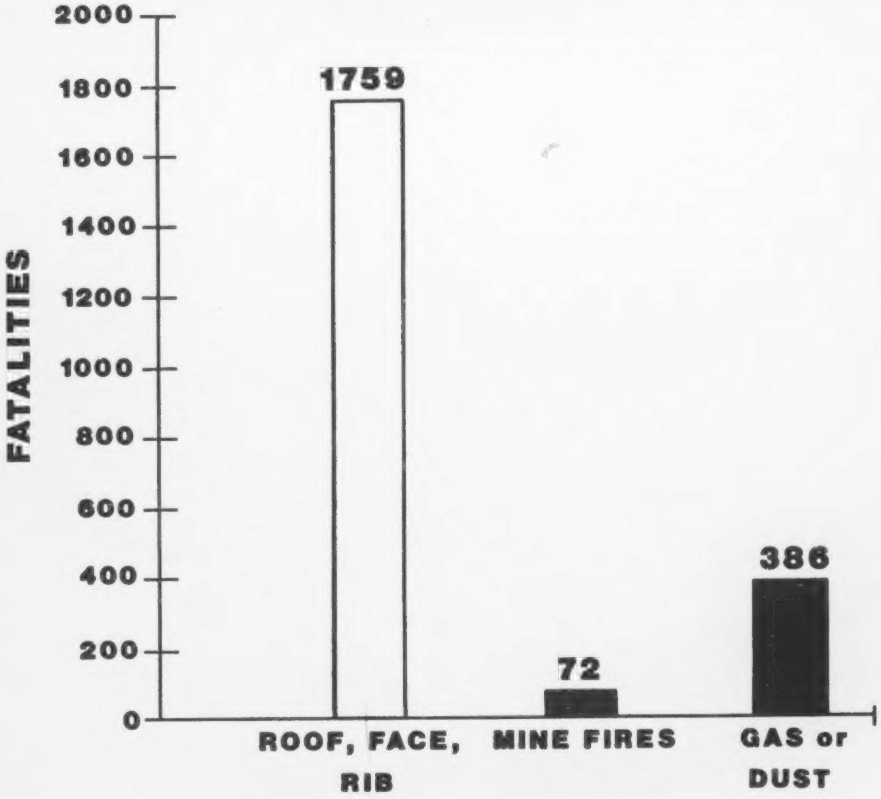

RETURN
INTAKE
CONVEYOR BELT
TWO ENTRY
INTAKE
RETURN
CONVEYOR BELT
FOUR WAY INTERSECTION (TYP.)
THREE ENTRY

WASATCH PLATEAU

EAST MOUNTAIN


1800'
1860'
1960'
Blind Canyon Coal Seam
Cottonwood Coal Seam
Hiawatha Coal Seam

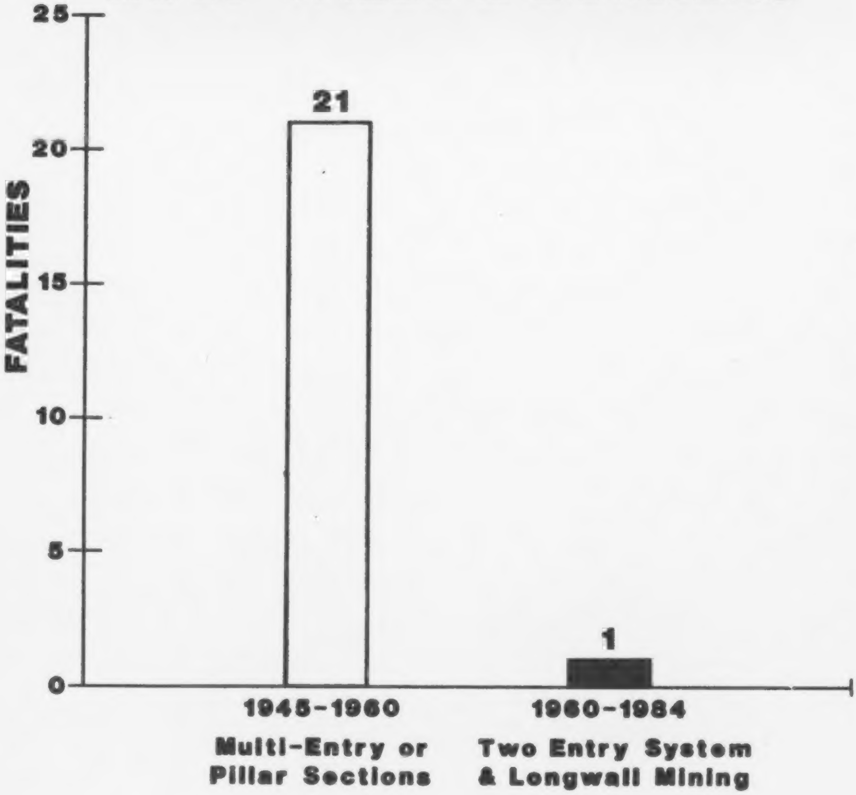
Comparison of Fatalities in Underground Coal Mines Roof, Face and Rib Falls, Bumps and Bursts vs. Mine Fires vs. Gas or Dust Explosions



(Data for 23 Years 1961-1984
from MSHA Health & Safety Analysis Center)

KAISER STEEL CORPORATION
SUNNYSIDE MINES

FATALITIES RELATED TO ROOF FALLS & BOUNCES



utah power & LIGHT COMPANY

P.O. Box 899
Salt Lake City, Utah 84110

NEWS

CONTACT John Ward
(801) 535-2531

April 27, 1987

WASHINGTON -- The Wilberg Mine disaster of 1984 was a painful tragedy, but all sectors of the coal mining industry must resolve to learn from the experience.

Utah Power & Light Co., in testimony presented Monday to the Senate Labor and Human Resources Committee, said that the company resolved that the Wilberg tragedy would not be compounded by inaction or excuses. Real progress has been made in improving and innovating safety systems that far exceed legal standards. And the company is continuing to make safety the No. 1 priority in its mines.

The company said the mining industry nationwide should learn from the tragedy and cooperation in that learning process is essential.

"Those of us in the mining community have long recognized that to achieve an accident-free work environment, there must be a conscious commitment of all who take a role in mining," said Dave D. Lauriski, director of health, safety and training in UP&L's Mining Division.

"Those who design, work in, and regulate mines must be highly skilled and vigilant. Not one of these factors alone can solve the problem; not labor, not management, not law. But together, we can and do make progress."

Mr. Lauriski said that the process of learning from the tragedy is not well served by a hostile atmosphere. "An atmosphere of recrimination is counterproductive to improving mine safety," he said. "For this reason, we believe that MSHA's (Mine Safety and Health

Administration's) preliminary report and the controversy surrounding it fall far short of the goals that concern this committee.

"For example, MSHA and the UMWA (United Mine Workers of America) concluded inspections of the Wilberg Mine less than one week before the fire. Neither entity found a single one of the 34 alleged violations issued by MSHA at the conclusion of their investigation into the Wilberg fire.

"The task, therefore, is not so much creating additional regulation, but having a thorough understanding of the existing regulations and seeking more effective ways of detecting, correcting and preventing unsafe conditions and acts."

In addition to providing background to the Senate committee regarding the recovery of the Wilberg Mine, Mr. Lauriski recounted numerous safety measures that have been implemented by the company since the fire. Some of those measures include:

-- Fire-proofing air compressor stations.

-- Creating a more reliable water supply for fire fighting.

-- Instituting mandatory hands-on training with self-rescuer breathing devices.

-- Installing state of the art electronic mine monitoring equipment.

-- Increasing training to handle actual emergencies.

-- Installing fire doors at strategic locations.

-- Installing fire suppression devices on equipment.

-- Providing mines with large capacity foam generators.

-- Eliminating aluminum overcasts.

-- Establishing mine rescue stations at each mine.

-- Increasing training for workers who may need to use these safety devices and increasing crisis management training for senior management officials.

Mr. Lauriski also said the company's actions to improve safety are not limited to fire-related issues. The company has improved general mining safety significantly by purchasing new roof bolting machines that better shield workers, by installing remote controls on mining machines, by replacing electrically-operated track vehicles with highly efficient and safe diesel equipment, and other steps.

A well-known mine fire expert, William B. Jamison, recently inspected UP&L's mines and summarized his report by saying that they "have the best fire protection and fire fighting facilities which I have seen . . . The Utah Power & Light Mining Division management have shown a sincere desire and dedication to have these superior facilities. I am impressed by the attitudes of employees who show that they intend to maintain these facilities and to know how to use them, if that should be needed."

Mr. Lauriski said any actions by the Senate committee should keep in mind the broad issues of mine safety in general. He urged committee members not to act against the two-entry mining system without considering its merits in increasing worker safety.

"We have all the evidence that one needs to see that by eliminating two-entry systems, western coal mine safety will take one giant step backward," Mr. Lauriski said. "We have both three-entry and two-entry systems in our mines. The difference in the ability to control the roof, avoid injuries and keep entries open is dramatic. Two-entry prevails every time."

Senator HATCH. Let me just ask some questions.

Mr. Savage and Mr. Zeller, were either of you informed during the months of November or December 1984 that an air compressor in the Wilberg Mine had a deficient temperature control switch and would operate only if jerryrigged or jumped to bypass that particular switch?

Mr. SAVAGE. No, I was not.

Senator HATCH. How about you, Mr. Zeller?

Mr. ZELLER. No, sir.

Senator HATCH. Were either of you aware that this same compressor had a deficient on-off switch and could be turned on only if connected to a circuit-breaker?

Mr. ZELLER. No, sir.

Mr. SAVAGE. No.

Senator HATCH. Mr. Savage, would limited operation of a piece of electrical equipment in this sort of condition have been permitted at Wilberg under your company's guidelines or procedures that existed at that time?

Mr. SAVAGE. Absolutely not, Senator. We have and have had a very extensive safety program—one that we work with our people and the individuals directly. It would have never been tolerated.

Senator HATCH. Do you agree with that, Mr. Zeller?

Mr. ZELLER. Yes, sir.

Senator HATCH. At what level of company management did the order to jerryrig the compressor and to operate it in that condition originate? Now, I do not particularly want names, just the level of corporate leadership.

Mr. JENSEN. Senator Hatch, if I may, my name is Jim Jensen, and I am General Counsel for the company, and I was requested by the company to oversee and undertake the company's investigation of the Wilberg disaster.

Senator HATCH. All right.

Mr. JENSEN. I might mention, Senator, that it was the company who first learned of the problem in the investigation and brought this fact and knowledge to the attention of MSHA.

My participation in the investigation has demonstrated to me that the level of knowledge of the bypass in the heat sensor switch did not go beyond the maintenance department at the Wilberg Mine.

Senator HATCH. Do you agree with that, Mr. Zeller?

Mr. ZELLER. I have no personal knowledge of it, sir.

Senator HATCH. Okay. Was this order, whoever did decide to jerryrig the thing, was it given with the knowledge and consent of anyone at the higher level in the company?

Mr. Zeller?

Mr. ZELLER. No, sir.

Senator HATCH. Mr. Savage?

Mr. SAVAGE. I certainly had no knowledge of it, Senator, and would not have permitted it.

Senator HATCH. Let me just ask you this. What sort of management practice would have allowed this to be done, to jerryrig the compressor?

Mr. ZELLER. I do not think I follow the question, Senator.

Senator Hatch. Well, did you have anybody in management who would have permitted this type of activity or this type of jerryrigging?

Mr. Zeller. Not that I am aware of. That is one of the reasons why we had the management training or supervisory training program with the emphasis on safety, was to eliminate that type of a thing.

Senator Hatch. Well, it happened, so what I want to know is who really approved it. You are saying just the maintenance people. Is that the best you can say?

Mr. Zeller. I guess I do not understand where you are coming from on the question.

Senator Hatch. I guess what I am saying is that somebody approved this. Was it anybody in management at all, or was it strictly a decision made by people who maintained the compressor?

Mr. Jensen. Senator, it was strictly a decision in the maintenance department. It never did go upstream into upper management. It never left the maintenance department.

Senator Hatch. I see.

Mr. Nielson. I was going to ask on the maintenance part, we had miners speaking on the first panel who said that it was a common practice for switches to be bypassed and this sort of thing, in Emery Mining. They went down a whole list of things that were common practice. Is there any basis for their statements, or any evidence you have that this was done other than to the compressor?

Mr. Jensen. Congressman—and I am sure you have a number of the transcripts—we participated in the taking of testimony that MSHA, under the control and direction of Herschel Potter, conducted in Utah in March of 1985, and I believe that the record that was taken by Mr. Potter for the most part substantially indicates that that was not a practice in the mines and that the attitude of the Emery management was one of safety and attention to safety.

Mr. Nielson. But that was stated earlier today, that there were a lot of instances of bypassing important electrical components of various things—the transformer, the compressor, and so on. And there seemed to be the allegation at least that that was a sloppy way of doing things, but that Emery did it all the time. And I wanted you to have a chance to comment on that statement.

Mr. Jensen. That allegation has been made, and Emery Mining does not believe that has been substantiated, and it was not the practice nor the position of the company.

Senator Hatch. I understand it that this actually goes up to the superintendent of maintenance, who then reports to the vice president of operations. And we have had some indication in the records and reports that the story was that you do not shut something down unless there is some real serious problem. Now, is that a correct statement, or am I misstating that?

Mr. Zeller. That is not true. In fact, we have testimony—I may have even included some with my statement—to the contrary by MSHA inspectors, and there are some good statements in there by representatives of the miners.

I would like to say another word, too.

Senator Hatch. Sure.

Mr. **Zeller**. There were a lot of things wrong with those mines when Emery Mining first took over, and I would like to call your attention—it is not up on the board anymore——

Senator **Hatch**. Can you put it back up there? Which chart do you want?

Mr. **Zeller**. Yes, the frequency rate. I would like to call your attention to these safety statistics. This is an injury frequency rate; it was very high. And we knew it was high, and we took specific steps to reduce it, and were quite effective in those efforts up until the fire itself. But I think that the results we got show the importance we put on safety.

And yes, occasionally occasions, particularly in those earlier years, would come to our attention. I would hear rumors, although second or third-hand, that maybe something had been jumpered out. But I can assure you, Senator, it was never our policy to do it, and we raised enough cain with our management people, particularly in the supervisory course. We absolutely did not want it done.

Mr. **Savage**. Senator, may I comment to that further?

Senator **Hatch**. Yes.

Mr. **Savage**. I think it is important that we have a little perspective on the size of our operation there. In those three mines, we had over 1,000 people, and approached as many as 1,800 people in the Wilberg, Deer Creek and Des-Bee-Dove mines.

Wilberg was a large mine. During the recovery effort, there were over 50 miles of entries recovered, and I do not recall offhand how much more tunnelling and entries there were in the mine. But we are looking at a large, and in my opinion, a very well-run mine. And I think it is important that we realize that in the organization each mine had a mine manager who was totally responsible for the operation and the management of that mine.

Mr. Dave Bocook—and I hired him; I know the kind of man he was—he was an electrical engineer; he had great maintenance experience. That is one of the reason we hired him, as well as mine management experience. And I certainly do not believe for one moment—and as I say, I knew Dave very personally and his family, as well as Jim Hamlin, who was the vice president of operations. Those fellows were smart and trained and educated enough to know how to manage and run a mine. I cannot believe for 1 minute that they would have permitted if such existed in any of the equipment at the mine.

Senator **Hatch**. Well, you have in this case, Mr. Zeller and Mr. Savage, 34 citations, 27 deaths, and the chart looks pretty impressive there in the incidence rate between 1980 and 1984. But nevertheless that is why we are going into this is because something terrible happened here.

Let me just say, as I understand it, within 30 minutes—and I will direct this to you, Mr. Zeller——

Mr. **Simonelli**. Senator, please. This is an inaccurate representation, and I have a way to disprove what they have been saying—if you will permit me to read this sentence——

Senator **Hatch**. Well, let me get you to a microphone if you are going to read it.

Mr. **Simonelli**. May I please have your microphone, Mr. Zeller? My name is James Simonelli. This is a memo from——

Senator **Hatch**. Mr. Simonelli, let us put the memo into evidence in the record at this point.

Mr. **Simonelli**. Fine.

Senator **Hatch**. And then can you summarize the memorandum?

Mr. **Simonelli**. I will just read you one sentence. "The severity rate of accidents which have occurred here to date show a considerable increase and has resulted in 136 more lost workdays than the previous year-to-date, while we worked out about 384,000 less man-hours."

Senator **Hatch**. Who is the memo from?

Mr. **Simonelli**. It is from Everett Winder, the safety director.

Senator **Hatch**. Can you leave that with us, and we will put that into the record.

[The document referred to follows:]

EMERY MINING CORPORATION
A SAVAGE BROTHERS COMPANY

TO: All Employees, Emery Mining Corporation

FROM: Evert W. Winder, Director of Safety and Health

DATE: June 21, 1983

SUBJECT: Accident Incidence and Severity Rates for All Mines

The year to date accident incidence rate for 1983 show a considerable improvement over the previous year. This improvement could not have occurred without the support and work of all Emery Mining employees. I would like to thank all of you on behalf of Emery Mining for the diligent efforts you have made.

The severity of accidents which have occurred year to date show an considerable increase and has resulted in 136 more lost workdays than the previous year to date, while we have worked about 384,046 less man hours.

This increase is due to several broken legs or feet due to ribfalls and numerous severe strains due to lifting of heavy materials or parts. Also, several have fallen while walking, shovelling belts, installing cribs, etc. Emery Mining sincerely requests your continued support in reducing accident which cause pain and suffering as well as lost work days.

A few suggestions which will reduce accidents of this type are as follows:

1. Make a good examination of the ribs and roof in all working areas prior to beginning work and as needed there after.
2. Never lift more than is safe to do so. Remember that footing in the mine is uneven, slick in most cases and has many tripping hazards.
3. When shovelling along belts position your body so you don't have to turn your body in a manner that can cause injury.

Remember it takes all of us individually and collectively to prevent accidents. A copy of the May, Monthly Safety Report is attached for your review.

P.O. Box 310 • Huntington Utah 84528 • (801) 687-9821

I would also like to express may concern for the months ahead. As you all know the yearly two week vacation period starts July 9th and everyone is looking forward to a good time. Unfortunately however, immediately before and after a scheduled vacation or holiday season has historically proven to be the time when accidents tend to increase. This year with the assistance of everyone we can reverse this trend if we all strive to do the following:

1. Work extra safe from now until vacation time. This will prevent accidents and we will be able to enjoy the time off.

2. Make your vacation plans at home and while at work keep your mind on the job your doing.

3. After vacation return to work with safety for yourself and your fellow worker first on your mind.

If we do the above we can all work accident free for the remainder of this year and make our mines the safest in the nation.

Enjoy your vacation and have a good time by keeping safety in mind for you and your family.

Evert W Winder

Evert W. Winder
Director of Safety and Health
Emery Mining Corporation

MONTHLY SAFETY REPORT

ACCIDENTS	MONTH	YEAR TO DATE	PREVIOUS YEAR TO DATE
DEER CREEK			
Total Accidents	9	55	150
Reportable	4	32	80
Incidence Rate	13.38	19.45	29.95
Severity Rate	97.0	269.23	147.2
WILBERG			
Total Accidents	10	56	148
Reportable	2	23	76
Incidence Rate	8.24	17.50	34.47
Severity Rate	41.21	216.40	130.47
DESERET			
Total Accidents	2	16	23
Reportable	1	3	2
Incidence Rate	17.35	9.23	4.44
Severity Rate	86.79	49.25	17.76
BEEHIVE			
Total Accidents	2	22	16
Reportable	0	6	4
Incidence Rate	0	13.86	9.40
Severity Rate	0	67.0	32.91
LITTLE DOVE			
Total Accidents			
Reportable			
Incidence Rate			
Severity Rate			
COMPANY			
Total Accidents	23	147	337
Reportable	7	64	162
Incidence Rate	10.14	16.71	28.17
Severity Rate	63.71	218.75	122.06
MAN DAYS LOST	44	838	702
MAN HOURS WORKED	138,122	766,178	1,150,224

NATIONAL INCIDENCE RATE 9.89

NATIONAL SEVERITY RATE N.A.

Senator HATCH. Now, as I understand, within the first 30 minutes of the fire, power for the entire mine was turned off—so I am going to direct this to you, Mr. Zeller—that rendered the underground water pumps which could have been used to fight the fire inoperable.

Now, wouldn't there have been a way to shut down the Fifth Right section without turning off the pumps?

Mr. ZELLER. Yes, sir. There was a way underground to turn them off, to turn it off.

Senator HATCH. Why wasn't that utilized, then?

Mr. ZELLER. I think in the panic or the excitement of the moment, I think people just overlooked that. In fact, we had set a policy in place at least a year, perhaps two years, before that fire, that we wanted somebody on the surface of all of our mines three shifts a day while they are in operation that knew the electrical system well enough that they could isolate parts of the fire. That man was there, but when he heard of the fire, he went underground to see what he could do to help fight the fire.

Senator HATCH. Okay. I am going to give you an opportunity to rebut this memorandum that Mr. Simonelli has just given us. You do not have to do it right now, but we will give you time to do that in writing if you have a rebuttal—because either your incidence rate is right, or the memorandum—there is no conflict between the incidence rate statistics shown as an exhibit to my statement and those contained in the memo introduced by Mr. Simonelli. The figures are different only because mine were for the entire year of 1963, whereas these introduced by Simonelli were only for the first 5 months of 1983. Regarding the severity of accidents, please refer to Mr. Lauriski's response to this question.

Mr. SIMONELLI. The severity rate.

Senator HATCH. The severity, all right. Well, we will give you a chance to rebut that if you would like.

But were either of you or both of you familiar with Mr. Simonelli's audit reports regarding the Emery Mining operations in 1983 and 1984?

Mr. SAVAGE. May I speak just a moment to the question, Senator?

Senator HATCH. Sure.

Mr. SAVAGE. I think it is important that we understand how Mr. Simonelli came with our company, and I think it is important to understand how much smarter he has gotten and the knowledge he has gathered in the last year or two to be able to come back and to be critical.

And on the other hand, I certainly do not wish to be putting down or whatever. He understands the direction he comes from and what is motivating him, and I suspicion they are different from what we may see periodically.

Mr. Simonelli was hired off the street by myself when he came to us seeking a job. He came as an auditor for the IRS, from the Revenue Department. He had moved to Utah from back East for several reasons and was working locally, wanted a better job, I assumed and understood. Mr. Simonelli had no experience whatsoever in mining. He was, as he self-categorizes himself, a paper pusher and a pencil pusher. And yet I am not trying to be critical of him. But I think that we must have some kind of basis from which we listened to the testimony of a man who has ranted and raved across the State of Utah and all over the country, that he came to us representing himself to be an auditor, a constructive person to help us in the mine.

He was not an officer of the company. He had no authority in our company as such, other than that of someone that gathered information for us at our request; this started initially. He worked as an assistant to one of our vice presidents to start with, and I guess you could say, "Well, why did you hire him?"

The reason he was hired was because he had experience as an internal auditor, or an auditor, with the revenue people. It was my desire to improve the management of the mine, for me to have a greater look at systems and how they worked in the mine. I wanted that, and we decided to try that effort to give us a better understanding of what was going on, because we did have a large operation. As I mentioned, we had over 1,000 and as many as 1,800 people in the operations.

He came on and began to gather some data. And maybe later on, you may want to address the audit reports and whatever else that he says he produced and so on. But he came in as one of our lay employees. He worked as an assistant. And we made him the internal auditor, which he worked for something less than 6 months.

He passed on information to me to help me get an understanding better of how some of our systems were working in our operations.

I just think that the wrong approach, the wrong view has been cast by most everyone as to his real assignment and position in the company, and I will not belabor that.

Senator HATCH. Let me go back to that question, though. Were either of you familiar with his audit reports made in 1983 and 1984?

Mr. ZELLER. I was not familiar with his reports. He claims to have made four major audits, and I was not made aware of the detail. Now, I was given summaries of those by our management people at the time, just verbal summaries. I did not read the reports until sometime probably in 1985.

Senator HATCH. This was after the incident occurred.

Mr. ZELLER. Yes.

Senator HATCH. Were you familiar with the reports, Mr. Savage?

Mr. SAVAGE. Yes. Some of his first reports came to me because he initially reported to me, Senator. I looked at those reports and studied them, took them for the value that I thought they had. He was always disappointed that I did not give him back the authority to make the corrections that he thought ought to be made.

On the other hand, one of the reasons I did not do that simply was because we had a management line and system of managing. He was not a part of that. I guess you could say he was a staff man. I often, in areas where I thought there were things that should be looked at, and I treated them, and when I was through with them, I disposed of them or whatever, or put them in the file, in certain instances.

But those that I thought had merit and would help us constructively better manage the mines and work with our people were passed on to Mr. Zeller or to Mr. Boccok or the manager of the other mines or the various safety departments.

Senator HATCH. Well, let me ask you this. What actions did you take to address the fires at the Wilberg and the Des-Bee-Dove mines that Mr. Simonelli had pointed out to you?

Mr. ZELLER. I would like to put that in perspective, Senator. At the time of the Des-Bee fire, Mr. Simonelli was a personal assistant to me, and I initiated investigation of the cause of that fire, and obviously, I wanted to find out what we could do to improve.

I asked Mr. Simonelli as part of this investigation to gather the data that had been produced as a result of it because it was a little scattered—some of it was at the mine, some in the Engineering Department, and so on. I asked him to bring this information together and then summarize it in a report where it would be easier to use.

He did not write the report. But in the course of collecting this information, he did have the opportunity to talk to a number of experienced mining people, experienced technical people. And as he went his rounds, he was told various things they had seen that they thought could be done better or should have been done differently. In fact, I gave him a lot of recommendations and said, well, if you are going to compile this like that, be sure these are in there.

He compiled a list of recommendations. I asked him then to put them into an agenda for a meeting, which he did. There were 16 items. And I have a copy of that with me today, Senator, if you would like to put that in the record.

Senator HATCH. Let us make it part of the record at this particular point.

[The material referred to follows:]

*ID. ~~DCOPY MODE SET~~
~~*READY~~

MEMO TO: JIM HAMLIN , RAY CHRISTENSEN , MORGAN MOON ,ART BRUNO ,
EVERT WINDER , RAY GUYMAN , GEORGE BELL, DAVE BOCCOK ,
JIMMY ATWOOD.

FROM: BILL Z.

SUBJECT: EMC EMERGENCY PROCEDURE PROGRAM

PLEASE REVIEW THE ITEMS IDENTIFIED ON THE ATTACHED SHEETS AND BE PREPARED TO DISCUSS THE ITEMS IN DETAIL AT A MEETING ON MARCH , 1984.

THE PURPOSE OF THE MEETING IS TO DISCUSS THE ISSUES AND IDENTIFY HOW WE CAN BEST IMPLEMENT THEM IN A COMPREHENSIVE EMC PROCEDURE PROGRAM.

DISCUSSION ITEMS DERIEVED FROM THE OBD FIRE INTERVIEWS

ITEM #1

MAINTAIN AN UPDATED AND CURRENT CALL LIST AND PROCEDURE LIST, WITH REGULAR DEPARTMENTAL AND INDIVIDUAL REVIEW WITH THEIR ELEMENTS AND PROCEDURES.

ITEM #2

INSPECTION OF GAS MASK CANNISTERS STORED AT THE CENTRAL WAREHOUSE.

ITEM #3

COMPREHENSIVE EMPLOYEE EMERGENCY TRAINING PROGRAM INCLUDING:
HANDS ON SELF RESCUER TRAINING,
FIRE EQUIPMENT AND EXTINGUISHER USE AND FAMILIARIZATION,
FIRE FIGHTING AND EMERGENCY PROCEDURES,
FAMILIARIZATION WITH EVACUATION AND FIRE DRILL PROCEDURES.

ITEM #4

COMPREHENSIVE MANAGEMENT EMERGENCY TRAINING PROGRAM INCLUDING:
THE COMPREHENSIVE EMPLOYEE COURSE CONTENT;
HANDS ON SELF RESCUER TRAINING,
FIRE EQUIPMENT AND EXTINGUISHER USE AND FAMILIARIZATION
FIRE FIGHTING AND EMERGENCY PROCEDURES,
FAMILIARIZATION WITH EVACUATION & FIRE DRILL PROCEDURES.
PLUS: LEADERSHIP CONCEPTS AND ACTIONS DURING EMERGENCIES,
DEALING WITH MINE FIRES FLOODS AND EXPLOSIONS,
FIRE FIGHTING TRAINING FILMS AND CLASSES,
RECOGNIZING & CORRECTING POTENTIALLY DANGEROUS SITUATIONS:
AVOIDING CATASTROPHIES;
USE OF THE EMC EMERGENCY PROCEDURES MANUAL AND CALL LIST;
FAMILIARIZATION WITH THE MINE EVACUATION PLAN,
LEADERSHIP DURING THE FIRE DRILL PRACTICES,
EARLY ASSESMENT OF EMERGENCIES AND PROMPT COMMUNICATION,
WHO IS IN CHARGE , WHO IS THE ORGANIZER , THE COORDINATOR?
VENTILATION CONCEPTS AND TRAINING.

ITEM #5

STRICT DISCIPLINARY ACTION REGARDING ANY ONE EXPENDING A FIRE EXTINGUISHER

ITEM #6

FORMULATE AN UNATTENDED DIESEL EQUIPMENT POLICY.

ITEM #7

ESTABLISH AN EMERGENCY PROCEDURE MANUAL

DEFINE DEPARTMENTAL RESPONSIBILITIES AND PROCEUDRES DURING EMERGENCIES.
MINE EVACUATION PLANS AND PROCEDURES.
FIRE DRILL PLANS AND IMPLEMENTATION.
KEEP A DETAILED LOG OF THE ACTIONS YOU TAKE AND THE PEOPLE YOU DEAL WITH DURING EMERGENCIES.
ESTABLISH A LIST OF EMERGENCY ITEMS THAT MAY BE NEEDED IN CERTAIN EMERGENCIES, AND BE EVEN BETTER PREPARED TO DELIVER THOSE ITEMS TO THE NEEDED LOCATION.
KEEP A BETTER RECORD OF MATERIAL USED AND CONTINUE TO STAY WITHIN THE, PRESCRIBED SYSTEM AND PROCEDURES DURING EMERGENCIES.
ESTABLISH A BETTER COMMUNICATION SYSTEM AND PROCEDURE TO DEAL WITH EMERGENCIES.
COORDINATE AND ORGANIZE FUNCTIONS AND DO NOT ALLOW PEOPLE TO CIRCUMVENT THE SYSTEM.
ESTABLISH A WHEREABOUTS SYSTEM FOR ALL PERSONNEL.
TAKING CONTROL AND AVOIDING CHAOS AND CONFUSION DURING EMERGENCIES.
ESTABLISH CONTINGENCY PLANS , A FLEXIBLE AND ACTIVE PLAN WHICH IDENTIFIES THE POSSIBLE CONTINGENCIES AND RESULTANT ACTIONS AND CONSEQUENCES.
GUIDELINES FOR FIGHTING AND SEALING A MINE FIRE.
SYSTEMATICAL FRAMING AND SEALING PROCEDURES.
GUIDELINES AND PROCEDURES FOR SCHEDULING OF CREWS WORKING UNDER APPARATUS DURING EMERGENCIES.
FIX , FIGHT , FLEE WHEN DO WE DO WHICH?
DEALING WITH GOVERNMENTAL , REGULATORY AGENCIES AND THE UNION DURING EMERGENCIES

ITEM #8

MAINTENANCE OF CURRENT AND ACCURATE MINE MAPS.

ITEM #9

PLANNING,PLACEMENT AND INSPECTION OF FIRE EXTINGUISHERS ON MOBILE EQUIPMENT AND KEY LOCATIONS THROUGHOUT THE SYSTEM (STANDARDIZATION).

ITEM #10

TASK TRAINING IN THE USE OF A PRE-OPERATIONAL CHECK LIST.

ITEM #11

REVIEW STATUS AND ADEQUACEY OF OUR CURRENT SAFETY MONITORING DEVICES.
ESTABLISH AN INVENTORY AND LOGGING OF THEIR USE AND WHEREABOUTS.
(EQUILIZER FOR CO, RIKEN FOR METHANE ETC.).
OBTAINING BETTER AND MORE ACCURATE READINGS IN EMERGENCY SITUATIONS.

ITEM #12

VENTILATION CONTROL - WHO SHOULD BE IN CHARGE ANYWAY?

ITEM #13

INSTALLATION OF FIRE DOORS AS A MATTER OF COURSE IN THE MINE ENTRY DEVELOPMENT.

ITEM #14

SAFETY ORIENTED SPECIFICATIONS AND MAINTENANCE OF DIESEL EQUIPMENT.

ITEM #15

THE NEED FOR FIRE DETECTION,MONITORING & SUPPRESSION DEVICES ON DIESEL EQUIPMENT

ITEM #16

PERIODIC FIRE DRILLS.
ASSURE THAT OUR PEOPLE ARE FAMILIAR WITH EMERGENCY/EVACUATION PLANS.

Mr. ZELLER. And I also have the minutes of a meeting held on April 10, 1984, in which action was taken on every single one of the 16 items.

Senator HATCH. Did you implement all of those recommendations?

Mr. ZELLER. Yes, sir, I have that. And while I am addressing it, I would like to read a memorandum into the record from Mr. Simonelli, if I might. This memorandum was written on February 2nd of 1984 to Mr. Dave Boccok who, of course, was the mine manager at Wilberg Mine. This is what Mr. Simonelli wrote.

> During my recent visits to the Wilberg Mine, it has become apparent to me, a paper pusher, that significant improvements have been made at the mine site. A most apparent and substantial improvement has been made by the men operating the Seventh Right longwall. The face was in textbook form when I saw it.
>
> The precision, efficient, and no-nonsense approach with which the men did their jobs is something I am proud to have seen. The men have a very definite safety first attitude. This, coupled with their methodical and well-disciplined team work, makes that operation our best.
>
> Your production record, equipment, and most importantly, the men in the Seventh Right longwall, show what a coal mine should be. I am proud to have seen what I consider our finest coal mine in the Wilberg Mine at Seventh Right longwall.

Senator HATCH. What is the date of that?

Mr. ZELLER. This is dated February 2, 1984, after the Des-Bee fire but before the Wilberg fire.

Senator HATCH. And that is Mr. Simonelli's memorandum?

Mr. ZELLER. Yes, sir, and I will give this to you if you like.

Senator HATCH. We will place that in the record at this particular point.

[The document referred to follows:]

①

February 2, 1984

MEMORANDUM

TO: Dave Bocock

FROM: James J. Simonelli

SUBJECT: 7th Right Longwall

During my recent visits to the Wilberg Mine it has become apparent to me - a paper pusher - that significant improvements have been made at the mine site.

A most apparent and substantial improvement has been made by the men operating the 7th Right Longwall. The face was in text-book form when I saw it.

The precision, efficient and no-nonsense approach with which the men did their jobs is something I am proud to have seen.

The men have a very definite "safety first" attitude. This coupled with their methodical and well disciplined team work makes that operation our best.

Your production record, equipment, and most importantly the men in the 7th Right Longwall show what a coal mine should be.

I am proud to have seen what I consider our finest coal mine - in the Wilberg Mine 7th Right Longwall.

JJS/sg

BEST COPY AVAILABLE

Senator Hatch. Why, then, was Mr. Simonelli removed from the audit function and later dismissed from the company in 1984?

Mr. Zeller. I cannot testified as to why he was removed from the audit function, but he went from that to taking over more or less the steering of a major computer software installation program that we were putting in, which combined all of the various administrative functions.

When his work in that was completed, he then became my assistant. He was no longer the internal auditor. And I used him to collect data, to assemble things for me, and that type of thing. That is the role he was in at the time of the Des-Bee fire.

Senator Hatch. Why was he fired, then, Mr. Savage?

Mr. Savage. Well, Senator, when he worked with me and reported to me for—I cannot remember—some months, and after a certain period of time and the information I was having, I thought it would be more important for him to work directly. Mr. Zeller became the general manager and the executive vice president. I was not always there onsite every day, but still spent considerable time there. And he was assigned to Mr. Zeller for some period of time, and as I recall, during that time Mr. Zeller found different work that he wanted him to do, or whatever the needs of our company were at that time.

But there was no sinister method in moving him or changing him, as far as I was concerned, at any point in time.

Senator Hatch. All right. The 1986 Gates Division report of the Public Service Commission of the State of Utah stated, and I quote: "In 1985 and 1986, EMC, Emery Mining Corporation, retained the services of law enforcement consultants to whom they paid about $63,000. Work performed was investigative in nature and to a significant extent centered upon gathering information concerning James J. Simonelli."

Now, that is in Volume 1, Section 5 at page 33.

Could you comment on that, Mr. Savage, tell us whether it is accurate, and if so, tell us who authorized this expenditure and why.

Mr. Savage. May I ask Mr. Jensen to respond to that, who handled our investigation?

Senator Hatch. Sure.

Mr. Jensen. Senator, you will recall that Mr. Simonelli went public with his allegations in the summer of 1984. The Wilberg Mine fire did not occur until December 19th, 1984. In the early part of 1985, the company was very, very suspicious of the possibility that arson or an intentional act on the part of someone had been the cause of the fire.

Emery Mining knew that it did [illegible] have the ability nor the expertise to do an in-depth investigation and analysis of this possibility. Emery Mining Corporation retained the services of law enforcement people out in Utah and they investigated the entire security system, the entire communications system, the entire computer security system, and they also looked at all former employees, existing employees, or employees who had been laid off, and also employees who had had any kind of a grievance with the company, and also any either former employees or existing employees who had any ties to any militant organizations. And that was the reason and the basis on which law enforcement was retained. It was the Wilberg fire.

Mr. Simonelli was a part of that investigation——

Senator Hatch. But he was not the sole part, is what you are saying.

Mr. Jensen. Absolutely not.

Senator Hatch. And the purpose was basically to see if you could find out whether or not there was some other cause of the fire, including arson.

Mr. Jensen. That is correct.

Senator Hatch. All right. Mr. Zeller, did you destroy or alter a confidential report prepared by Mr. Simonelli regarding the December 1983 fire at Emery's Des-Bee-Dove Mine?

Mr. Zeller. No. As I said earlier, Senator, Mr. Simonelli did not write the report that I had asked him to write. What he is probably referring to is a piece of paper on which he had several allegations on it; none of them were substantiated. There were no recommendations on it, nothing useful on it. And I discarded it like I discarded many pieces of paper every day of my job.

Remember this, sir. I had in the neighborhood of 1,000 people working for me; I had a lot of memorandums coming across my desk, a lot of information, and probably not a day went by that, by the time I left the office, my wastepaper can was not full of stuff.

Senator Hatch. Mr. Zeller, did Mr. Simonelli ever make a statement to you to the effect that Emery was lucky that there was no loss of life at the Des-Bee-Dove fire and that the company might not be so lucky next time—or words to that effect?

Mr. Zeller. No, sir. I made a statement very similar to that to him when I gave him the project of collecting this data and writing the report, because I wanted to impress on him the importance of that report.

Senator Hatch. But you do not recall him making a similar statement to you.

Mr. Zeller. No, sir, no, sir. They sound like my words to him.

Senator Hatch. Were you aware that the latest mine evacuation plan on file for the Wilberg Mine with MSHA was the 1974 plan filed by the previous coal mine operator, the Peabody Coal Company?

Mr. Zeller. I was not aware of that.

Senator Hatch. Was Emery using that plan at the time this fire occurred?

Mr. Lauriski. Senator, if I might, can I answer that question?

Senator Hatch. Sure.

Mr. Lauriski. While there was a plan that had been filed with MSHA in 1974 under Peabody, technically, Emery Mining had not refiled that plan in 1984. However, during 1984 and shortly after the Des-Bee-Dove fire, assignments were made to develop new firefighting and evacuation procedures. That had been completed, and in November of 1984, after the miners returned from the contract strike, we held our annual retraining session. During that session the miners were taught under the new evacuation procedures. They were never taught the things that were in the 1974 plan.

We spent a great deal of time during that session, in excess of two hours, as I recall, speaking specifically on firefighting and evacuation procedures. We had used the plan that we had been writing for the past several months to do that training.

Senator HATCH. So you had actually a different plan in effect at that time, but it formally had not been accepted or documented.

Mr. LAURISKI. We had a much more comprehensive plan than what was on file with MSHA.

Senator HATCH. If you were using a different plan, then, Mr. Lauriski, why wasn't it filed with MSHA?

Mr. LAURISKI. Senator, I do not know, other than it was just a technical oversight on someone's part.

Senator HATCH. Do you know of that yourself, Mr. Zeller?

Mr. ZELLER. I do not know either, sir.

Senator HATCH. Let me ask you this, Mr. Zeller or Mr. Lauriski, or both. Was hands-on training with self-rescue devices ever required at the Wilberg mine prior to this particular fire, and if not, why not?

Mr. ZELLER. Prior to the fire, Senator, it was not required. It was an optional thing——

Senator HATCH. Why not?

Mr. ZELLER. Many people—we offered it—many people stepped forward and actually had hands-on training. Others declined it. The mistake we made was not making it mandatory.

Senator HATCH. Okay. We have heard many criticisms of your operation of the Wilberg Mine; the fact that a jerryrigged compressor was allowed to exist and to be operable for approximately a month is a serious allegation. Failure to properly fireproof and ventilate the compressor; the failure to properly separate the air courses; the failure to adequately train miners in the use of self-rescue devices; the failure to act on the warnings, whatever they were, of Mr. Simonelli. You could go on and on; you could go through all 34 citations.

But these failures seem to indicate that the Wilberg Mine fire was not really an accident but a failure on your part, or at least on the part of MSHA, the regulatory agency, to safeguard your mining operations.

Now, am I wrong in going away from this hearing with the impression that the fire was probably inevitable, given the safety standards that were existing there? You seem to say it was not, but it seems to me and to the MSHA people, to Herschel Potter—they are saying it was inevitable.

Mr. ZELLER. Senator, I agree with Herschel Potter that it was human failure. I do not agree with MSHA, that they have really identified the true cause of that fire.

As a matter of hindsight, yes, we see a lot of things that need to be done better, a lot of things that need to be done differently. But until we figure out how to get everybody to always do what they need to do, I think that the task at hand for industry and the representatives of the miners and the government as well is to increase safety awareness among all people that work in the mining industry, because even though we come through with policies, we come through with training, we come through with all sorts of things like—and the government comes through with regulation—trying to make mines safer, unless people actually—and I mean individuals, individual people, both foremen and work force alike—

unless they follow these things and keep the safety awareness at the forefront all the time, there are going to be accidents, there are going to be disasters. And I think that is the task that we all face, is figuring out how to we keep that safety awareness in the forefront of everybody's mind that works underground.

Senator HATCH. Well, Mr. Savage, you indicated that Mr. Simonelli may not be a very credible witness, but yet you have stated that your employees were well-trained—both of you have stated they were well-trained—prior to the fire. And you have indicated that you felt you operated a safety mine. But if you listen to MSHA, you listen to Mr. Simonelli, you listen to others who are involved, they indicate that the facts indicate otherwise.

Now, Mr. Simonelli does not agree; MSHA does not agree, and MSHA has pretty well admitted some of the things that they wish they had done right.

Mr. Potter does not agree, and you admit Mr. Potter knows what he is talking about. And your employees who have testified do not agree.

Now, you are not coming here today saying that was a safe mine, and it was operated safely and that this was just one of those things that happened, are you?

Mr. SAVAGE. No, sir. There were a lot of mistakes made.

Senator HATCH. And you agree with the mistakes that I have pretty well outlined in this hearing so far?

Mr. SAVAGE. Yes, there is a lot of improvement. And I think what Congressman Nielson has said is quite right; there is plenty of blame for everybody, including ourselves.

Senator, may I comment to that further?

Senator HATCH. Go ahead.

Mr. SAVAGE. I think that it would be a disservice to everyone here to think that Wilberg was not a well-run mine. I would say that probably Wilberg was as well run a mine and better than the average mine in the United States.

Senator HATCH. Mr. Savage, if that is so, we are in real trouble.

Mr. SAVAGE. Well, I am telling you, that is the kind of problems we have got in the mining industry, because there are some things we probably have not addressed. And I do not know whether you want to get to that yet or not.

But that mine, from my own knowledge of the people who were there—I mean, people are the difference—that mine had as fine a mine management as any mine I had anything to do with, and I have a pretty broad experience with several mines in the West.

I know that our people were as fine a management and as fine a supervision and as fine a work force people as I found in any mine I have anything to do with. And that is why I think we do have a bigger problem maybe than we are addressing here today.

And it is a joint effort, and the people are the things that make the difference.

Senator HATCH. Well, I think we do have a bigger problem. That is why I have jumped all over MSHA to straighten it out.

Mr. SAVAGE. But they cannot do it alone.

Senator HATCH. And I think your testimony here indicates that it goes a lot broader than just the Wilberg Mine. And if that is the case, then, Mr. McMillan, we are going to really count on you to get things straightened out, because we do not want anymore deaths like this.

Mr. **Jensen**. Senator, may I comment just a moment?

Senator **Hatch**. Sure, Mr. Jensen.

Mr. **Jensen**. As to the cause of the death of the employees, even though Emery trained its employees in the use of the self-rescuers pursuant to and, in my opinion, in compliance with the MSHA standards, in retrospect, I think it is apparent that such training was not sufficient and did not go far enough. That was the first thing that went wrong, because if those people who were in the mine could not get on or did not know when to get on or did not know how to properly put on or properly use the self-rescuer, everything else becomes immaterial, because they are in trouble, and they are down.

And I do not think there is any question but that there was a failure in the adequacy of the training of the SCSR units.

As to the cause of the fire—and you touched on it earlier—in anticipation that the fire zone area would be recovered in mid-1986, Emery retained the services of a reputable fire reconstruction firm and experts. These experts were allowed to observe on a periodic basis the recovery of the fire zone area and the contents and evidence within.

Of particular interest to them was the burn pattern, the ash band between Crosscut 34 and Crosscut 36.

These experts also observed the air compressor as it was recovered in Crosscut 36, as well as the cardboard box that has been referred to and the smashed five-gallon oil can that has also been referred to. The cardboard box was not burned, and the paint was still visible on the five-gallon can.

These experts were also allowed to observe the physical condition of the air compressor as it was disassembled by MSHA, the FBI, and the Emery County Sheriff's Office at Castle Dale, Utah.

These experts were also allowed to observe laboratory testing of certain of the air compressor parts conducted by the Pittsburgh Testing Laboratory.

At their request, these experts were supplied by Emery with thousands of pages of witness statements and transcripts concerning the fire. During the past month, these experts were also given a copy of PTL's written report concerning the laboratory tests conducted on the air compressor parts.

The experts who have investigated hundreds of fires, including the Beverly Hills Supper Club fire, the MGM Grand Hotel fire, and the recent Dupont Plaza Hotel fire in Puerto Rico, have recently advised Emery that the air compressor as the cause of the fire is possible but not very probable. This is based on the fire pattern, the ash pattern, physical condition of the air compressor.

I might also mention that the manufacturer of the air compressor came to Utah and observed the air compressor in its disassembled condition. And they have preliminarily indicated that based on their expertise, they do not believe that the air compressor caused the fire. Arson as the cause of the fire is possible, but not very probable.

Their preliminary opinion concerning the possible cause of the fire having the highest probability is that the fire started on the roof somewhere between Crosscut 35 and Crosscut 34 at the belt overcast and was caused by a phase to ground fault in the 480-volt electrical cable which was anchored to the roof and which travelled down Entry No. 4 from the transformer in Crosscut 35 to the belt drive in Crosscut 34.

Senator **Hatch**. So you yourself rule out the arson allegation, then.

Mr. **Jensen**. Our experts have not ruled it out. They said it is still a possibility. But they have a weighted scale that they put these things on, and what they have told us is that it is possible, but not very——

Senator **Hatch**. Would you be kind enough to provide us that information?

Mr. **Jensen**. Yes. We have only had it verbally, and we have requested our experts to continue in their investigation and in their analysis, and we have requested a written report, and we would be happy to submit that.

Senator **Hatch**. Then we will ask that you submit that written report as soon as you can.

Mr. **Jensen**. Thank you.

Senator **Hatch**. Congressman Nielson, we will turn to you.

Mr. **Nielson**. Thank you, Senator Hatch.

I would like to read part of the official testimony. Herschel Potter is the questioner; Don Cologie is the respondent. And I want to ask Mr. Zeller and Mr. Savage and Mr. Lauriski—any of you—if you agree with the general tenor of this questioning because it is very important in terms of what the conditions were at Wilberg at the time of the fire.

Question. "How would you characterize the overall condition of the Wilberg Mine following the last inspection?"

Answer by Mr. Cologie: "I would have to say following the last inspection, Wilberg Mine has come a long way. I would say of the three mines, counting Deer Creek, Des-Bee-Dove, Deseret, that is one, Wilberg was probably the cleanest and best mine in the company."

Question. "And you have worked in other mines in your mining career other than Wilberg?"

Answer: "Yes, sir."

Question. "And based on your experience, you make that statement?"

Answer: "I make that statement from what I have seen in the different mines compared to Wilberg, yes."

Question. "But what is your opinion of mine management's attitude toward the health and safety at the Wilberg Mine, say in the last 12 months?"

Answer. "In the last 12 months?"

Question. "Yes, sir."

Answer. "They were working with the Union to try to do everything, I think, to work together real good."

Question. "Did the rank-and-file share that same attitude toward health and safety?"

And he said, "I have to honestly say we had some people in the rank-and-file—very few—that might have, you say, you know, some guys are mouthy. Some guys go for their eight hours. They do not care if there is safety or not. But most of the rank-and-file, the majority of them, 90 percent of them, were the same way as the company, working together for the betterment of safety and health."

Okay. This implies, according to Mr. Cologie, that the Union and the rank-and-file and the company were all working toward safety. Would you agree that is a fair assessment of the mine and the conditions at that time?

Mr. **Lauriski**. Mr. Nielson, perhaps I could address that.

Mr. **Nielson**. Yes.

Mr. **Lauriski**. I had been there approximately eight months prior to the December fire and had worked closely at the Wilberg Mine with Mr. Bocook and Mr. Cingolani. And I would say that the dialogue that just went between Mr. Potter and Mr. Cologie was for the most part true. There were handfuls of individuals who always wanted someone else to take care of them, to take care of the job for them.

Safety is a very personal issue. Mr. Cologie is one who takes that as a very personal issue, as did most of the people at that mine. The mine was very well-run, and it was very safety conscious. Mr. Bocook, I do not believe in my career had I ever had an opportunity to work with an individual who had the ideas and the commitment toward safety as he did.

Mr. **Nielson**. Mr. Lauriski, was Emery Mining management ever able to find out in advance when MSHA was going to come, to show up to inspect the mines in the area?

Mr. **Lauriski**. The only time that we would know of an MSHA visit would be on technical inspections. That would be inspections to look at our ventilation plans or inspections to look at a particular roof control problem. We did not have advance notice of pending physical inspections, if you will.

Mr. **Nielson**. Mr. Zeller, according to various sources—let me read an article by Mr. Jim White, a former member of UMWA Local 2176. He said:

> Wilberg is a case study of how this works. In late 1981, Emery instituted what it called a "bonus and safety plan". At the time, its two largest mines, Deer Creek and Wilberg, had very high accident rates. The company was especially dissatisfied with the level of production at Wilberg. The bonus plan set production levels for each mine. If the miners produced over that level, a cash bonus was paid to every miner, foreman, supervisor and office worker in the mine.
>
> The amount of the bonus was reduced according to the number of injuries that resulted in lost-time work. Over the month, individual miners also had their bonus reduced according to their attendance during the month.

Now, when I first visited Wilberg Mine 2 weeks before the fire, I was given a belt buckle, which I appreciate and prize. On that belt buckle, it brags about the production record. And there was allegation by Union members and others that management was pushing people to increase the record. In fact, the fact that they had members there and administration people there was evidence in their mine that they were pushing it.

Were you overlooking any safety considerations in trying to better that record of which you are justly proud?

Mr. **Zeller**. No, sir. We were trying to reduce our costs. But as I think that chart shows, in fact we had a greater result, we had a greater improvement in safety than we had in efficiency in that period.

Mr. NIELSON. You do not think the try for a new production record that day had anything to do with the safety considerations for that particular day?

Mr. ZELLER. No, sir.

Mr. NIELSON. Okay. Would you explain the bonus and safety plan, or do you agree with this analysis of it? Mr. Wyatt said that you pay the whole group a certain amount if they get a certain production, and deduct if there is an injury, and so on. Is that a correct assessment?

Mr. ZELLER. Basically, that is correct. Money that was paid out in the bonus plan was earned by production; it was modified by safety. In fact, they could lose the entire bonus if the mine was too unsafe—specifically, injuries, the number of injuries.

Mr. NIELSON. Would you say you had to egg the workers on, or were they anxiously working hard for themselves? Were they as anxious to increase the production as you were?

Mr. ZELLER. I think they were just as anxious. I think we have on the average a very well-motivated work force in Utah.

Mr. NIELSON. Okay. How would you describe the relationship between your company and the Union prior to and following the 1984 strike?

Mr. ZELLER. At Wilberg Mine, we had a good relationship, I think——

Mr. NIELSON. Then why the strike?

Mr. ZELLER. That was a contract strike.

Mr. NIELSON. I see. The relationship was good other than the strike that intervened. Okay.

What was your relationship with the International Union? How was it?

Mr. ZELLER. Well, we had a bitter negotiation during the strike period to get a new contract, but I think——

Mr. NIELSON. Is it fair to say you had a better relationship with the Local Union than you did with the International Union?

Mr. ZELLER. Better with the Local.

Mr. NIELSON. Okay. And what about with the rank-and-file members? Was that even better yet?

Mr. ZELLER. Yes, sir.

Mr. NIELSON. Okay.

Now let me turn to a technical question. When did your company first learn about the blockage on Sixth Right? When did the company first know that the Sixth Right——

Senator HATCH. The tailgate section.

Mr. NIELSON [continuing]. The tailgate section.

Mr. ZELLER. I did not know until after that fire had started, while I was up there on the rescue attempt. But in going back through the literature, I can see that management—Dave Boccok apparently knew it.

Mr. NIELSON. Mr. Lauriski, could you answer that question? When did management first know about the blockage on the Sixth Right section, the tailgate for the Fifth Right?

Mr. LAURISKI. My understanding from the information gathered during the investigation was that in October of 1984, management became very concerned about the conditions in the tailgate entry of the Fifth Right section. Conditions were deteriorating, and there was an effort made by the supervisors who remained on the property to go into that tailgate entry, hand-carry roof supports, and try to secure the area.

Mr. **Nielson**. Were you at all surprised that MSHA did not really worry about the fact that you had a tailgate entry problem there, and said there was no violation of the law—in other words, you did not have to get a variance or any kind of adjustment? Were you surprised that they took no action on your request?

Mr. **Lauriski**. No, I am not. Looking at the——

Mr. **Nielson**. Why did you send the letter if you were not surprised at their reaction?

Mr. **Lauriski**. There are oftentimes gray areas within the regulations, and this is one of those areas.

Mr. **Nielson**. So you were just making sure you were covered?

Mr. **Lauriski**. As I would understand it, yes, that is correct. We did not want to encounter a problem with a particular bit of enforcement, and so we covered that base by letting MSHA know upfront that we did have a problem, and we did not want to get into a situation.

Mr. **Nielson**. To what extent, if at all, did you communicate your concerns to the Union about the blockage?

Mr. **Lauriski**. Mr. Nielson, I do not know.

Mr. **Nielson**. Would anyone know? Mr. Zeller?

Mr. **Zeller**. I do not know.

Mr. **Nielson**. Okay. Let me conclude with this comment. I do appreciate, Mr. Lauriski, the tour we had of the mine after the fire, after the recovery efforts, and I was impressed by the display about the two-entry versus three-entry as far as the cave-ins are concerned.

However, I have to tell you that when we talked this over with other people, they said that you had set it up for us; in other words, you put up a display for us; you made no attempt to clean it up, to make it look as bad as possible with a multiple-entry as compared with a two-entry.

Would you like to respond to that?

Mr. **Lauriski**. That is not at all the case. Those conditions are conditions——

Mr. **Nielson**. Do you mean I am not telling the truth, or——

Mr. **Lauriski**. The statement that you made about we set that up for you is not an accurate statement.

Mr. **Nielson**. I am just stating what was said to me, that maybe you had made the display even more impressive than it ordinarily would be, for our benefit.

Mr. **Lauriski**. It is very difficult to simulate the roof conditions and the rib conditions and the rolled crib conditions that you saw that day, Mr. Nielson—very difficult—those conditions exist.

Mr. **Nielson**. I thank the panel.

Senator **Hatch**. Thank you. Let me just end with this statement. I have listened to the testimony, and I have to say, Mr. Savage, that I understand how you feel, that you operated a good mine, that you felt like they were good employees; you were close to it; you feel deeply about it.

But I think probably Mr. Zeller's comments where he admits that there were a lot of mistakes made are more accurate. When you have 34 citations, 27 people die, that is pretty serious stuff.

Now, you did indicate that there were some problems there, too, and there is plenty of blame to go around. But you have also said that this is one of the best-operated mines in America, and I do not think the facts bear that out.

With regard to you—and I appreciate your candor, Mr. Zeller, in admitting that there were many mistakes made here, because I think it is an understatement, but it was a candid statement. And we appreciate you saying that here, because it is a very, very serious and terrible thing that has happened here.

Okay. Howard would like to ask one more.

Mr. NIELSON. Mr. Zeller, I had another question I was supposed to ask. I am sorry about that.

You mention on page 4 of your testimony that two escapeways remained open and passable throughout the fire, including one that initially was free of smoke and dangerous levels of carbon monoxide.

I wonder if you could tell us exactly what those two escape routes were that remained open and passable throughout the fire?

Mr. ZELLER. Could I borrow the MSHA exhibit that shows the mine?

Senator HATCH. It is right over there against the wall, I believe. It is right over there against the wall.

Mr. NIELSON. I was aware of the bleeder and so forth, but I was not——

Mr. ZELLER. That is what I am referring to. The one route that we know at the beginning of the fire, at the early hours of the fire, was free of smoke and carbon monoxide was the bleeder entry.

Mr. NIELSON. The bleeder is one of the two you are talking about. What is the other one?

Mr. ZELLER. The other one is the way that the sole survivor came out. He came out the secondary escapeway, which is the belt entry, and then took the dogleg down just before it reached the main entries.

Senator HATCH. Do you want to point it out on there?

Mr. ZELLER. The part in yellow is that bleeder.

Mr. NIELSON. I understand the bleeder one.

Senator HATCH. Right.

Mr. ZELLER. Oh, okay. Where he is pointing is where——

Mr. NIELSON. So that is the second one you are referring to?

Mr. ZELLER. Yes, sir.

Mr. NIELSON. I thank you.

Mr. ZELLER. And that remained open throughout the fire, both routes.

Senator HATCH. All right.

Mr. NIELSON. It was not clear from your testimony. I wanted to clear it up.

Mr. SAVAGE. Senator Hatch, may I just respond very briefly to your comment? It certainly was not my purpose to say that that mine was a perfect mine. But my intention——

Senator HATCH. No, I did not get that out of your statement.

Mr. SAVAGE. But my intention was to say that I think that the Wilberg Mine had as fine a work force, Union people, as there is in the industry, and that that mine was managed as well as any mine is managed in the industry, and that there was as much concern for the people and for how things were done and for the whole spectrum of mining as any mine in the industry, and that we did make mistakes.

I certainly was not trying to say that we did not——

Senator HATCH. Go ahead. I understand. But I am telling you that regardless of all that, you still have what really amounts to a deplorable situation here——

Mr. SAVAGE. That is right.

Senator HATCH [continuing]. That could have been avoided. Part of it is MSHA's fault, part of it is your fault. And part of it may be some of the employees' fault, since the jerryrigging may have been done by maintenance people. But be that as it may, 34 citations, I consider pretty serious stuff. And of course, nobody can ever calculate the loss of 27 people. It is just one of those things.

Mr. Lauriski, I think this Committee recognizes the good efforts that Utah Power & Light has undertaken in taking the several positive steps in the Wilberg Mine that you have since this incident. And I think you have to be commended for providing your employees with hands-on training with self-contained rescue devices. I want to compliment you for that.

And I think with the use of the concrete and steel overcasts for the ventilation, I think that is good, too. I am glad you made those changes. And your proposal for a panel in waiting would appear to be a positive step forward as well, and I think it does appear that you are setting a very good example in some of these areas.

The reason I have not asked you any questions is because basically, we had counted on somebody coming who knew about this matter, who was in a position to make policy at Utah Power & Light. I talked to Mr. Hunter, Allan Hunter, a week or so ago. He called me and said that he did not know anything about it, even though he is down there now, and therefore, he felt he could not come. So I asked him to write to me and just mention that, and that would be all right. But I assumed they would send somebody who actually made policy during this period of time. So that is the reason I have not asked any questions.

We had a lot of questions that perhaps we could ask, and I will submit them in writing to Utah Power & Light, because we want to know why Utah Power & Light allowed the Wilberg Mine to be operated, really, in an unsafe manner the way it was and why it did not investigate the circumstances behind the fire at the Des-Bee-Dove Mine back in 1983 and make the necessary changes in all of its mines. We want to know where its auditors were; what did Utah Power & Light uncover in any internal probes that were taken. So I want cooperation in getting this material to us. I think we can do that in writing. And why did there have to be a fire at Wilberg before the company decided to become more involved? So those are all questions that I am going to ask in writing, and I would like your cooperation and the cooperation of Utah Power & Light and its leadership. And Mr. Westerby, we will ask you to make sure that they get those questions answered for us.

Mr. **Westerby**. Yes, Senator. Dave Westerby, Counsel for Utah Power. I talked with Mr. Hunter this morning. I think there was a genuine misunderstanding about who was supposed to be here today.

Senator **Hatch**. I think there was, and so I will make an allowance for it. But I did expect somebody to come who made policy there at Utah Power & Light.

But be that as it may, every one of those questions can be answered in writing. We want to have the documents involved and we will just have to go from here. And if you answer them in writing fully and completely, it may not necessitate further hearings on this matter. So I just wanted to bring that to your attention.

Mr. **Westerby**. Thank you, Senator.

[Responses of Mr. Westerby to questions submitted by Senator Hatch follow:]

utah power & LIGHT COMPANY

1407 West North Temple
P.O. Box 899
Salt Lake City, Utah 84110
(801) 535-4242

F. N. DAVIS
President and
Chief Executive Officer

1 June 1987

Honorable Orrin G. Hatch
United States Senate
Committee on Labor and Human Resources
Washington, D.C. 20510-6300

Re: Hearing on Wilberg Mine Fire
Written Questions to Utah Power
Your Letter of 12 May 1987

Dear Senator Hatch:

Thank you for your letter to Mr. E. Allen Hunter, Chairman of the Board of Utah Power, asking for answers to written questions to complete the record of the 27 April 1987 hearing into the Wilberg Mine fire. Mr. Hunter has asked that I respond to your letter.

After consulting with the appropriate people within Utah Power, we are pleased to give the following answers.

Question 1. Is it now and has it been company policy to audit major contracts such as the one that your company held with Emery Mining Corporation to operate the Wilberg and any other mines between the years 1976-1986?

Answer. Utah Power does audit major contracts of this type and did audit the Emery Mining Corporation contract during the years mentioned. The Utah Power Auditing Department conducted numerous audits on specific subjects relating to Emery Mining's operations. In fact, in early 1983 Utah Power hired and relocated an individual from Salt Lake City to Price to act as an internal auditor, with primary responsibilities for audit of the Emery Mining contract charges, payments on coal purchase contracts and coal hauling contracts, and other coal-related activities.

In addition to financial audits, Utah Power engaged mining engineers and other experts from time to time to conduct operational audits.

Question 2. If it is not company policy to audit such contracts, then what other procedural safeguards are afforded to protect the Utah ratepayer from abuses by your contractors?

Answer. As indicated in our answer to Question 1, it is our policy to audit such contracts.

Question 3. Was your company aware of the audits made by Mr. Simonelli on behalf of Emery Mining Corporation in the years 1982-1984? If so, what actions did your company take to follow up on the findings of these audits?

Answer. Yes, Utah Power became aware of Mr. Simonelli's audits. He performed several audits, all within 1982, the last of which was dated 21 December 1982. The Utah Power auditor made initial contact with Mr. Simonelli on 24 February 1983 to review the extent of his audits and to obtain copies of his audit reports.

Mr. Simonelli's audit reports were carefully reviewed and used as background and reference for our own audit plans. Follow-up varied with the type of audit involved. Where new systems had replaced the audited systems, we verified that the new systems addressed the audit findings or made them obsolete. Where further study seemed appropriate, we included such study in our own audit plans. For example, Utah Power's audit of the bonus plan followed a bonus plan audit of Mr. Simonelli. Utah Power's audit revealed some errors in accounting for bonus payments, and appropriate adjustments were made.

Question 4. Were you aware of verbal or written reports of fire hazards that were being made by Mr. Simonelli to Messrs. Neal Savage and William Zeller of Emery Mining Corporation during the 1982-1984 period? If so, what actions did you take as a result of these reports?

Answer. No. No warnings of fire hazards came to our attention despite the taking of two depositions of Mr. Simonelli in 1984. In those depositions, Mr. Simonelli complained of waste and mismanagement. Utah Power was aware that the lessons learned from the Des-Bee-Dove Mine fire were already being addressed by Emery Mining's safety experts.

Question 5. Mr. Simonelli stated at the hearing that Emery audit reports contradict the charts presented by Mr. Lauriski, which showed the incidence of safety problems diminishing during the two years prior to the Wilberg fire. What is your explanation for this contradiction? Please refer to the document placed in the hearing record by Mr. Simonelli which raised this apparent contradiction.

Answer. Unfortunately, we have not yet obtained a copy of the document referred to in the question. Therefore, we have no basis for answering. We understand a copy of the document has been mailed to us. When we receive it, we will supplement our response.

Question 6. Did your company take any actions to ensure greater safety at its mines following the Des Bee Dove Mine fire of December 1983?

Answer. Yes. See answer to Question 7.

Question 7. You have made substantial progress in upgrading safety at the Wilberg Mine since the December 1984 fire. Why weren't some of these steps, such as strengthened overcasts, taken prior to the fire?

Answer. A number of steps were taken by Emery Mining, primarily as lessons learned from the Des-Bee-Dove Mine fire of December 1983. Also, the fire showed us what was working well. The fire started on a piece of diesel-powered mobile equipment. Men deeper in the mine than the burning equipment donned their SCSRs (Self Contained Self Rescue breathing apparatus) without incident and escaped through the gases generated by the fire. In fact, they even tried to fight the fire as they made their way out of the mine. Water was available in quantities sufficient to fight the fire. After the fire area was sealed, water was pumped in to lower temperatures and eventually snuff out the fire. No overcasts were involved in the Des-Bee-Dove fire.

From the Des-Bee-Dove fire, it was learned (a) portable firefighting equipment is needed on diesel-powered equipment and (b) noxious gases can filter through to adjacent seams from the caved gob area.

Utah Power observed that Emery Mining took several steps based on these lessons:

(1) Fire extinguishing equipment was installed on every piece of self-propelled, diesel-powered equipment. All had fire extinguishers, and all new schedule 31 equipment (permissible face equipment) had special extinguishing systems.

(2) An emergency preparedness program was developed that included firefighting and evacuation procedures. Firefighting and evacuation instructions were given to every employee for his or her particular mine at the annual retraining schools in October and November of 1984. Emphasis was placed on SCSRs and

their effectiveness. This subject was addressed by Dave Lauriski in his testimony.

(3) Fire doors were planned for the Deer Creek and Wilberg Mines to create the ability to isolate sections of the Mines.

That any ventilating devices, such as overcasts, could be damaged by fire or heat was never discussed.

The development of automatic sensors or monitors for air quality and fire indication had been followed closely by our Mining and Exploration Department. However, the serviceability and reliability of such devices or systems was questionable prior to the time of the Wilberg fire. It has been only in the last few years that the efficiency and reliability of these systems has improved to make them reliable tools for the mining industry.

Question 8. What is the amount of the rate rollback you have agreed to make to your customers as a direct result of allegations of mismanagement of the Emery coal contracts that were made by Mr. Simonelli?

Answer. The rate refunds were instigated by a report of Utah's Division of Public Utilities, issued last November, that criticized coal operations under Emery Mining and by the scheduling of Utah Public Service Commission hearings into these complaints. We cannot say specifically what role the allegations of Mr. Simonelli or others played in the refunds.

In late March, Utah Power agreed to rate refunds totaling $86 million in an effort to restore public and regulatory confidence in Utah Power, remove financial uncertainty, and avoid erosion of Utah Power's image that two or more years of contested public hearings and court appeals would bring.

Question 9. Mr. Simonelli testified before the Committee that some $63,000 was spent by Emery in investigating him and that this amount was passed on to the ratepayer. Is this an accurate statement on Mr. Simonelli's part, and if so, will that $63,000 be refunded to your customers?

Answer. This is not an accurate statement. James T. Jensen, counsel for Emery Mining, testified at the hearing:

> . . . Mr. Simonelli went public with his allegations in the summer of 1984. The Wilberg Mine fire did not occur until December 19, 1984. In the early part of 1985, the company [Emery

> Mining] was very, very suspicious of the possibility that arson or an intentional act on the part of someone had been the cause of the fire.
>
> Emery Mining knew that it did not have the ability nor the expertise to do an in-depth investigation and analysis of this possibility. Emery Mining Corporation retained the services of law enforcement people out in Utah [Law Enforcement Consultants, Inc.] and they investigated the entire security system, the entire communications system, the entire computer system, and they also looked at all former employees, existing employees, or employees who had been laid off, and also employees who had had any kind of a grievance with the company, and also any either former employees or existing employees who had any ties to any militant organizations. And that was the reason and the basis on which Law Enforcement was retained. It was the Wilberg fire.
>
> Mr. Simonelli was [only] a part of the investigation.

In any event, the $63,000 spent on the total investigation outlined above would be a part of the refund described in answer to Question 8.

I hope this information is helpful. We will send an answer to Question 5 as soon as we review the document referenced in that question. If we can be of further assistance, please let us know.

Sincerely yours,

Frank N. Davis

utah power
& LIGHT COMPANY

1407 West North Temple
P.O. Box 899
Salt Lake City, Utah 84110
(801) 535-4242

F. N. DAVIS
President and
Chief Executive Officer

3 June 1987

Honorable Orrin G. Hatch
United States Senate
Committee on Labor and Human Resources
Washington, D.C. 20510-6300

Re: Hearing on Wilberg Mine Fire
Written Questions to Utah Power
Your Letter of 12 May 1987

Dear Senator Hatch:

This letter is a follow-up to my letter of 1 June 1987, where we answered written questions to complete the record of the 27 April 1987 hearing into the Wilberg Mine fire. Originally, we could not answer Question 5 because we had not received a document referenced in that question. Since then, your staff sent us a copy of the document.

Here now are our supplemented answers, including an answer to Question 5.

Question 1. Is it now and has it been company policy to audit major contracts such as the one that your company held with Emery Mining Corporation to operate the Wilberg and any other mines between the years 1976-1986?

Answer. Utah Power does audit major contracts of this type and did audit the Emery Mining Corporation contract during the years mentioned. The Utah Power Auditing Department conducted numerous audits on specific subjects relating to Emery Mining's operations. In fact, in early 1983 Utah Power hired and relocated an individual from Salt Lake City to Price to act as an internal auditor, with primary responsibilities for audit of the Emery Mining contract charges, payments on coal purchase contracts and coal hauling contracts, and other coal-related activities.

In addition to financial audits, Utah Power engaged mining engineers and other experts from time to time to conduct operational audits.

Question 2. If it is not company policy to audit such contracts, then what other procedural safeguards are afforded to protect the Utah ratepayer from abuses by your contractors?

Answer. As indicated in our answer to Question 1, it is our policy to audit such contracts.

Question 3. Was your company aware of the audits made by Mr. Simonelli on behalf of Emery Mining Corporation in the years 1982-1984? If so, what actions did your company take to follow up on the findings of these audits?

Answer. Yes, Utah Power became aware of Mr. Simonelli's audits. He performed several audits, all within 1982, the last of which was dated 21 December 1982. The Utah Power auditor made initial contact with Mr. Simonelli on 24 February 1983 to review the extent of his audits and to obtain copies of his audit reports.

Mr. Simonelli's audit reports were carefully reviewed and used as background and reference for our own audit plans. Follow-up varied with the type of audit involved. Where new systems had replaced the audited systems, we verified that the new systems addressed the audit findings or made them obsolete. Where further study seemed appropriate, we included such study in our own audit plans. For example, Utah Power's audit of the bonus plan followed a bonus plan audit of Mr. Simonelli. Utah Power's audit revealed some errors in accounting for bonus payments, and appropriate adjustments were made.

Question 4. Were you aware of verbal or written reports of fire hazards that were being made by Mr. Simonelli to Messrs. Neal Savage and William Zeller of Emery Mining Corporation during the 1982-1984 period? If so, what actions did you take as a result of these reports?

Answer. No. No warnings of fire hazards came to our attention despite the taking of two depositions of Mr. Simonelli in 1984. In those depositions, Mr. Simonelli complained of waste and mismanagement. Utah Power was aware that the lessons learned from the Des-Bee-Dove Mine fire were already being addressed by Emery Mining's safety experts.

Question 5. Mr. Simonelli stated at the hearing that Emery audit reports contradict the charts presented by Mr. Lauriski, which showed the incidence of safety problems diminishing during the two years prior to the Wilberg fire. What is your explanation for this contradiction? Please refer to the document placed in the hearing record by Mr. Simonelli which raised this apparent contradiction.

Answer. The document to which you refer is a memorandum to Emery Mining employees from Evert W. Winder, then Director of Safety and Health for Emery Mining. The purpose of his memo was to encourage greater attention to safe work practices.

Mr. Winder's memo does not contradict Mr. Lauriski, but in fact confirms that the accident incidence rate was dropping. Mr. Winder begins his memo by saying, "The year to date accident incidence rate for 1983 show [sic] a considerable improvement over the previous year." Mr. Lauriski's chart was demonstrating this same point -- that accidents had been occurring much less frequently over time until just before the Wilberg Mine fire.

Mr. Winder's memo also points out an increase in accident severity. This does not contradict what is said about the incidence rate because incidence and severity do not always follow the same trend.

Our mine safety experts tell us that the severity index is not considered as meaningful as either the accident incidence rate or the incidence rate of lost time accidents. The severity rate is really only a measure of the number of lost workdays. Nationally, incident rates are published, but severity rates are not.

Question 6. Did your company take any actions to ensure greater safety at its mines following the Des Bee Dove Mine fire of December 1983?

Answer. Yes. See answer to Question 7.

Question 7. You have made substantial progress in upgrading safety at the Wilberg Mine since the December 1984 fire. Why weren't some of these steps, such as strengthened overcasts, taken prior to the fire?

Answer. A number of steps were taken by Emery Mining, primarily as lessons learned from the Des-Bee-Dove Mine fire of December 1983. Also, the fire showed us what was working well. The fire started on a piece of diesel-powered mobile equipment. Men deeper in the mine than the burning equipment donned their SCSRs (Self Contained Self Rescue breathing apparatus) without incident and escaped through the gases generated by the fire. In fact, they even tried to fight the fire as they made their way out of the mine. Water was available in quantities sufficient to fight the fire. After the fire area was sealed, water was pumped in to lower temperatures and eventually snuff out the fire. No overcasts were involved in the Des-Bee-Dove fire.

From the Des-Bee-Dove fire, it was learned (a) portable firefighting equipment is needed on diesel-powered equipment and (b) noxious gases can filter through to adjacent seams from the caved gob area.

Utah Power observed that Emery Mining took several steps based on these lessons:

(1) Fire extinguishing equipment was installed on every piece of self-propelled, diesel-powered equipment. All had fire extinguishers, and all new schedule 31 equipment (permissible face equipment) had special extinguishing systems.

(2) An emergency preparedness program was developed that included firefighting and evacuation procedures. Firefighting and evacuation instructions were given to every employee for his or her particular mine at the annual retraining schools in October and November of 1984. Emphasis was placed on SCSRs and their effectiveness. This subject was addressed by Dave Lauriski in his testimony.

(3) Fire doors were planned for the Deer Creek and Wilberg Mines to create the ability to isolate sections of the Mines.

That any ventilating devices, such as overcasts, could be damaged by fire or heat was never discussed.

The development of automatic sensors or monitors for air quality and fire indication had been followed closely by our Mining and Exploration Department. However, the serviceability and reliability of such devices or systems was questionable prior to the time of the Wilberg fire. It has been only in the last few years that the efficiency and reliability of these systems has improved to make them reliable tools for the mining industry.

Question 8. What is the amount of the rate rollback you have agreed to make to your customers as a direct result of allegations of mismanagement of the Emery coal contracts that were made by Mr. Simonelli?

Answer. The rate refunds were instigated by a report of Utah's Division of Public Utilities, issued last November, that criticized coal operations under Emery Mining and by the scheduling of Utah Public Service Commission hearings into these complaints. We cannot say specifically what role the allegations of Mr. Simonelli or others played in the refunds.

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In any event, the $63,000 spent on the total investigation outlined above would be a part of the refund described in answer to Question 8.

I hope this information is helpful. If we can be of further assistance, please let us know.

Sincerely yours,

Frank N. Davis

DAW:km

Senator **Hatch**. I do agree there is apparently a misunderstanding here that may very well have been caused by me.

So with that, we appreciate the testimony that has been given, and unless Congressman Nielson has any further questions, we will let you all go.

Now, let me call you back, Mr. Simonelli, to the table. And we are just going to give you a minute—we will give you 2 minutes—to respond to any new information that you feel was brought up by this panel.

Mr. **Simonelli**. I was taking notes. You tell me when to start, and I will go.

Senator **Hatch**. You can start right now. Just pull that microphone over and begin.

Mr. **Simonelli**. My memo on the severity rate is very important, Senator. It is also something like saying we have had a lot less littering, but we have had several bank robberies.

Senator **Hatch**. We will take that memo and make it a part of the record at this point.

[The document referred to appears on p. 95.]

Mr. **Simonelli**. Emery Mining and Utah Power & Light know full well I was a special agent with the Criminal Investigation and Intelligence Division of the Internal Revenue Service, and I was reassigned back to the Internal Revenue Service after departing Emery Mining in the narcotics group.

Senator **Hatch**. Okay. Now, I am going to give you more time than just this to submit more comments in writing. But I want you to hit the salient points, if you can.

Mr. **Simonelli**. Safety—in 1983, the budget (document No. 2), was $15,000. Public relations was $34,000. It had no budget established. They spent twice as much on public relations as they did on safety.

A letter, press release (document No. 3), released by Neal Savage, May 19, 1983, "Emery Mining has announced the appointment of two executives to fill slots in the auditing operations. Emery Mining President Neal Savage has appointed Alex Poulos the new operations auditor and Jim Simonelli as the new internal auditor." And it goes on to describe a little bit more.

My safety memo (document No. 4), which they somehow lost or do not know where it went, I have a memo January 27, 1984, where I describe: "The following areas and activities are the best candidates for audit examination during 1984 inasmuch as they have not been audited before or are areas of substantial exposure and high risk." In and amongst them is the Safety Department, mine plan, industrial engineering and training program. The documents (Nos. 5, 7, 8, 9, and 10) I submitted to the State of Utah in August of 1984, right here, the list—"You must get the investigative findings of Dave Robinson. You must get the depositions of Brent Wilcox. You must get all the investigative work that has been done that Utah Power & Light has stopped from being opened and revealed." There have been many findings that have been revealed by their own investigators. They hired people to compromise me. They in fact debriefed me, and I gave them every, single thing I am giving you, and I have said everything, single thing I said here today to them. They have had it.

Senator **Hatch**. All right. We will put all these documents into the record at this point.

[Documents referred to follow:]

EMERY MINING CORPORATION
Emery Mining Overhead
For the Month Ending May 31, 1983

	This Month			Year-to-Date		
	Budget	Actual	Variance	Budget	Actual	Variance
Administrations						
Controller	$ 51,087	$ 60,465	$(9,378)	$ 266,546	$ 273,635	$ (7,089)
Purchasing	19,791	20,996	(1,205)	106,419	121,183	(14,764)
Material Control	65,627	22,201	43,426	359,058	358,641	417
MIS	136,946	118,442	18,504	691,505	624,515	66,990
Total	$273,451	$222,104	$51,347	$1,423,528	$1,377,974	$ 45,554
Operations						
Engineering	$ 43,118	$ 43,205	$ (87)	$ 234,141	$ 232,835	$ 1,306
Maintenance	44,599	40,004	4,595	248,895	258,535	(9,640)
Employee Relations	49,774	42,823	6,951	269,019	227,422	41,597
Safety	17,967	15,798	2,169	90,408	81,854	8,554
Industrial Engineering	22,580	22,467	113	111,753	111,078	675
Total	$178,038	$164,297	$13,741	$ 954,216	$ 911,724	$ 42,492
Executive						
Triad	$ 38,125	$ 273	$37,852	$ 38,125	$ 273	$ 37,852
Public Relations & Amer. Fork Chg		34,579	(34,579)		98,173	(98,173)
Security	10,153	7,509	2,644	50,194	45,761	4,433
Internal Auditing	4,399	3,386	1,013	21,878	20,774	1,104
Other	18,846	30,086	(11,240)	95,002	104,139	(9,137)
Total	$ 71,523	$ 75,833	$(4,310)	$ 205,199	$ 269,120	$(63,921)
TOTAL	$523,012	$462,234	$60,778	$2,582,943	$2,558,818	$ 24,125

SGJ/jb

(Excerpt from Sun Advocate, May 19, 1982)

#3

in the marketplace...

U.S. Steel appoints Yourston

Robert E. Yourston

EAST CARBON — Robert E. Yourston, veteran coal mine operator, has been named general superintendent for U.S. Steel's coal mining operations in the West.

The appointment, effective June 1, was announced this week by A.E. Moran, vice president of operations for U.S. Steel Mining Co. Inc.

Headquartered in East Carbon, Yourston will direct the steel firm subsidiary's western district coal operations at the Geneva Mine in Horse Canyon, the Somerset, [illegible] Mine and the coal preparation plant in Wellington.

Yourston is presently general superintendent of the Gary, W. Va., district.

A native of Seattle, Wash., he holds a bachelor's degree in mining engineering from the University of Washington at Seattle.

His U.S. Steel mining career began at the western district coal operations in 1957 where he held various management positions including general mine foreman of both the Geneva and former Columbia mines. In 1971, he was transferred to the company's Lynch, Ky., district as superintendent of personnel services.

One year later, he was moved to the Frick, Penn., district and, in 1973, he returned to western district coal operations as assistant to the general superintendent.

Moving again in 1976, he was appointed assistant general superintendent at the Gary, W. Va., district. In 1979 and 1981 respectively, he returned to the Lynch district and Gary district as general superintendent.

Yourston is a member of the American Institute of Mining Engineers. He and his wife, Betty Lou, will relocate in East Carbon.

Chamber honors Ray Downard

The Carbon County Chamber of Commerce has named Ray Downard its Businessman of the Month for May.

Downard, who served as Chamber president in 1960, was Carbon County assessor from 1966 until April 1981 when he retired. He continues to do part-time work for the county assessor's office.

He was Scoutmaster in the Price Fifth LDS Ward for several years and continues to be active in community and civic functions.

A building contractor for 15 years, Downard currently serves on the board of directors for the Castle Country Travel Council.

He was instrumental in initiating, planning and creating the College of Eastern Utah Prehistoric Museum with Dr. J. Eldon Dorman, Dr. Quinn Whiting and others. He secured and helped refurbish a number of display cases for the museum. He continues to serve on the museum board of directors and conducts tours of the museum for youth and community groups.

He has served as secretary and board member of the International Assessor's Association. He was honored by that group as Assessor of the Year in 1973 and again in 1978.

Emery Mining names auditors

HUNTINGTON — Emery Mining Corp. has announced the appointment of two executives to fill slots in its auditing operations.

Emery President Neal Savage has appointed Alex Poulos as the new operations auditor and Jim Simonelli as the new internal auditor.

Poulos has been participating in the company's management development program. Prior to that, he was assistant mine manager at the Wilberg Mine. He was also a mining engineer at Hiawatha.

He holds a degree in mining engineering and will be responsible for auditing all operations at the mine sites.

Simonelli was a special agent for the U.S. Treasury Department, Internal Revenue Service, for the past 10 years. He holds a degree in business administration in economics from Manhattan College.

Foodtown board picks Leonard

[illegible]

EMERY MINING CORPORATION
A SAVAGE BROTHERS COMPANY

DEPOSITION
EXHIBIT
R12 Simonelli
Rocky Mountain
Reporting Service

January 27, 1984

MEMORANDUM

TO: Bill Zeller

FROM: James J. Simonelli

SUBJECT: Summary of Audit Activities During 1982 and 1983

The various departments were contacted regarding any performed audits, audit contacts, and investigative inquiries within those departments during 1982-1983.

This memorandum is a summary of the results of those contacts.

CONTROLLER

Some of the audit activities listed below are part of the annual corporate audit performed by Peat, Marwick and Mitchell, UP&L audit activities and the Deloitte, Haskins and Sells audit of UP&L activities.

Payroll Audit

Peat Marwick and Mitchell - 1982 and 1983
Utah Power & Light Internal Audit - 1982
IRS Inquiries of W-4 Violators Only - 1982 and 1983
FICA Inquiry by UP&L - 1982
Deloitte Haskins & Sells - 1983
The 1980 Wage Earnings Information was Resupplied to SSA for proper recording - 1983

Sales Tax

Utah State Tax Commission - 1982

Bill Zeller
January 27, 1984
Page 2

Sent 4/1

Retirement and Benefits (Union)

United Mine Workers of America Health & Retirement Funds - 1982
UP&L audit inquiries - 1982
Peat, Marwick and Mitchell inquiries during annual corporate audit - 1983

Management Pension

Fox and Company - 1982 and 1983 (of previous years)

Workman's Compensation

UP&L inquire - 1982

Accounts Payable

UP&L internal audit (Larry Thompson) of Inventory Accounting and General Accounting activities.
Auditing of Accounts Payable activities are performed as part of the performance of the purchasing and material control activities and the corporate audit.
Deloitte, Haskins and Sells procedure and security review - 1983
Royalty and assessment confirmation inquiry by UMWA - annually

PURCHASING

Parsons, Behle and Latimer response to PSC inquisition - 1982
Peat, Marwick and Mitchell - 1982 and 1983
UP&L audit (Gary McPhie) - 1982
UP&L audit (Doug Jepson) - 1983
Deloitte, Haskins and Sells security review - 1983

MANAGEMENT INFORMATION SYSTEM

Peat, Marwick and Mitchell (John Aoki) - 1983
Review by Deloitte, Haskins and Sells - 1983

[illegible] 4:

INDUSTRIAL ENGINEERING

Minerals Management Department of BLM - 1982 and 1983
United States Geological Survey Audit - 1982 and 1983
Deloitte, Haskins and Sells (Per UP&L) - 1982 and 1983
EMC is also accountable to UMWA for bonus/incentive program and assessment and royalties reviews.

MATERIAL CONTROL

Annual Physical Inventory is observed by UP&L Auditors and UP&L Material Control personnel, Deloitte, Haskins and Sells, and Peat, Marwick and Mitchell Auditors - 1982 and 1983
Parsons, Behle and Latimer response to the PSC - 1982
Theodore, Barry and Associates (Doug Bennett) response to PSC - 1982

HUMAN RESOURCES

OFCCP - EEOC, the Office of Federal Contract Compliance Program; Equal Employment Opportunity Commission audit - 1981.
OFCCP-EEOC reports 1982 - 1983.
U.S. Census Bureau Annual Reports

OPERATIONS

The operations division is regularly inspected by Deloitte, Haskins and Sells at the direct request of UP&L regarding equipment, serial numbers, etc. The auditors actually go underground during these inspections. (Property accounting audits)

The federal and state mine safety inspectors also perform regular inspections of our operations activities.

The Department of Interior, the U.S. Forest Service, conducts regular inspections and reviews of our surface and engineering activities.

NIOSH, National Institute of Occupational Safety and Health, and the OSHA, Occupational Safety and Health Administration, also perform regular inspections and reviews (primarily our warehouse activities).

The Office of Surface Mining (OSM) conducts regular inspections.

We are also subject to reviews by the UMWA safety committee.

The State Industrial Board performs various and sundry reviews and inspections by its various agencies (Workmans Compensation, Safety, EEOC, etc.).

EMC is also subject to Department of Labor, Wage and Hour examinations.

The Utah State Division of Gas, Oil and Mining performs reviews, inspections and examinations at EMC primarily of various permits, underground plans and the enforcement of OSM regulations.

The LDS church reviews production records of the Des-Bee-Dove Mines.

The Utah State Board of Health oversees our drainage, sewage and potable water activities.

JDS
Dem't 4E

CONSULTATION AND PROCEDURAL EVALUATION

In 1981 Theodore, Barry and Associates performed a review of the various Emery Mining Corporation divisional functions making recommendations which EMC has been in the process of implementing since the report was issued.

In 1983 Paul D. Tomlingson and Associates performed an in-depth review of the maintenance function and planned actions regarding the recommendations made are now being evaluated.

In 1982 Charles Hooper and Company performed a corporate structure review making certain recommendaions which EMC has been implementing.

In 1983 Deloitte, Haskins and Sells conducted two reviews of the Administration Division Departments regarding the Triad Project.

In 1982 United States Steel personnel advised and counseled EMC regarding its mine maintenance programs.

Senate 4F

EMC INTERNAL AUDITING ACTIVITIES

MAJOR AUDITS

Audit report on the Return of parts to Joy Manufacturing - July 7, 1982.

Audit report on the Percentage of Repair Cost compared to purchase - October 8, 1982.

Audit report Mine Material Supply Requisition System and procedures - October 19, 1982.

Audit report on the Bonus Bingo Plan - December 21, 1982.

Senate 45

PROJECTIONS FOR 1984

The following areas and activities are the best candidates for audit examinations during 1984 in as much as they have not been audited before or are areas of substantial exposure and high risk.

Significant Areas

- The EMC Thrift Plan
- MIS-EDP Audit
- Insurance Plans
  - Health - Medical
  - Dental
  - Life - Accidental Death
  - Vision
  - Liability Coverages
- The Salary Continuation Plan
- The General Account

Human Resources Department

- Personnel - Employee Relations
- Labor Relations Activities
- Arbitration Agreement
- Union Grievance Settlements
- Job Description Standards
- Promotional - Reassignment Standards
- Hiring - Firing Practices

Operation Division Activities

- Machinery Usage (Appropriateness)
- Job Description - Compliance
- Job Qualification of Incumbents
- Certification Verification

Engineering Activities

- Project estimate, schedules, appropriations, etc.
- Compliance with Standards, Code, Law, etc.
- Establishing Standards and Specifications.
- Project and Specifications, Review Process.

GENERAL AREAS

House Coal Sales
Management Performance Audit
Records Retention
Receiving Audit
Discounts
Consumption of Wet Gear, Boots, etc. (Consumer usable items)
Incentive Bonus
Gasoline Usage/vehicle usage
Security Audit
Disposal of Salvage - Bidding Process (Maintenance of arms length relationships)
Mine Plan
Training program
Safety
Industrial Engineering

The periodic performance of audits should occur as follows:[1]

Department/Function	Years
Purchasing (Bidding)	1-2
Subcontract Administration	1-2
Payroll (Accounting and financial activities)	1-2
Inventory Management	1-2
Inter-company Business Management	3-4
Operations (Planning/scheduling)	2-3
Risk Management	2-3
Risk Reporting	1-2
Health Care Plans, Company Savings, Retirement Plans	2-3
Special Reviews	(As required)

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[1] Source: Warren Gorham & Lamont 1983 Internal Auditing Manual (EXCERPTS).

In conclusion, the allocation of audit resources as suggested within the Warren Gorham & Lamont Internal Auditing Manual is as follows:

Internal Accounting Control	30%
Operational Policies and Procedures	20%
Financial Information Reporting	10%
Standards of Business Conduct	10%
Electronic Data Processing	20%
Special Investigation Work, Board and Management Requests	10%
	100%

Naturally there can be significant differences in emphasis of the application of audit resources but these guidelines and information should assist Emery Mining Corporation management in appropriately controlling and directing corporate audit resources.

JJS/sg

JECT: Engineering Operations Review and Audit DIVISION/DEPARTMENTS:

ALS: Improve the Engineering Dept in 12 Major Areas (See Proposal Memo)

FICERS/EMPLOYEES: Bill Zeller For Approval, Morgantown & Mine Site Personnel
Mine Managers

DATE	REMARKS
-29-84	Completed & Submitted ENGARD Proposal for Organization Chart.
6-84	Supplemented Proposal - Submitted To Bill Z - Quick Review of Proposal in Person w/ Bill Z.

#5

W 24. Fire Engineering

- 1 a. Inherent/Anticipated results of structure physical surroundings, material reactions
- 2 b. Evacuation PLAN/Safety Exits
- 3
- 4 c. Posting of Signs

X 25. Probability Analysis regarding Pressure, Product or Equipment Life, Replacement, etc.

Y 26. Computer Graphics

- a. Possible use of sonar or scientific devices

Z 27. Microwave or Optical Devices in Underground Communication and Systems

A1 28. Fluid Mechanics

B1 29. Thermodynamics

C1 30. Designs and Graphics

D1 31. Analysis and Design of Machines and Expected Life

E1 32. Research and Development

F1 33. Use and Life of Internal Combustion Engines

- a. Design Modifications to Prolong Life
- b. Engine Performance in Mining Conditions

SIMONELLI DOCUMENTS:
MASTER FILE

#11-7

BINDER VOLUME NUMBER ONE (1)

SECTION A - PERSONAL INFORMATION AND/OR GENERAL INFORMATION

1. Safety Award dated November 15, 1983.
2. Law Enforcement School Certification dated August 23, 1972.
3. Department of the Treasury Certification dated September 28, 1973.
4. Letter of reference dated March 27, 1984 from James F. Hamlin, Jr.
5. Letter of reference dated March 27, 1984 from Ray Christensen.
6. Letter of reference from W.H. Curtice, Jr. (No date).
7. Letter of reference dated March 27, 1984 from William L. Zeller.
8. Cost Effective Coal Mine Supervision Training Certificate dated November 14, 1983 to November 18, 1983.
9. Photograph of miners who attended the Cost Effective Coal Mine Supervision Training. (identified from left to right on following page.)
10. Letter from Hamlin to Simonelli dated November 1, 1983 regarding the Cost Effective Coal Mine Supervision Training Program. (Nineteen (19) pages follow RE: Training Packet/Schedule).
11. Statement of Responsibilities of Internal Auditing.
12. The Institute of Internal Auditors, Inc. - CODE OF ETHICS.
13. Newspaper clipping dated January 18, 1984 from Sun Advocate News reprinted from The Daily Herald RE: Matheson acknowledging Simonelli's comments.

14. Utah Department of Employment Security - Separation Notice.

15. James J. Simonelli's Resume.

16. Envelope addressed to J.J.S. from State of Utah Insurance Department post marked November 25, 1982 (Enclosed is Utah Insurance Department Resident Application for Insurance Examination or License.)

17. Chart re: reducing the cost of coal with an EMC/Savage logo.

18. Memorandum to Zeller from J.J.S. dated December 29, 1983 RE: Audit proposal of EMC Engineering Department.

19. Memorandum to Neal Savage from J.J.S. dated July 8, 1982 RE: Internal Audit Opinion Terminology.

20. Memorandum to Ray Christensen from J.J.S. dated January 11, 1984. RE: Walker Software Implementation Project.

21. Same as number 20. - Glen Beard.

22. Same as number 20. - Greg Cowan.

23. Same as number 20. - Wayne Horsecroft.

24. Same as number 20. - Bill Curtice.

25. Page two (2) of an Internal Audit Contract Memorandum (Payroll Audit Project) dated March 11, 1[illegible]3 (Page one (1) was missing).

26. EMC Internal Audit Project Chronological Work Sheet.

27. Same as above.

28. NOTES - handwritten notes on blank sheet of paper.

29. "The Ten Commandments of the Team Approach."

30. Letter to J.J.S. from Robert M. Baker, Senior Research Engineer, Allen Corporation dated February 10, 1984.

31. Blank paper with a sketch drawn on it and four (4) words.

32. Computer Printout (appears inconsequential but could be "log on" numbers; 3 pages).

33. Notes - handwritten notes on a lined sheet of paper (13 pages.)

34. Eleven (11) copies of journal covers relating to various mining issues.

35. Memorandum to William H. Curtice and Glen Beard from J.J.S. dated May 24, 1983 RE: Annual Physical Inventory Procedure (26 pages of enclosure).

36. One (1) page document showing inventory items.

SECTION B. - EMC EMPLOYEE INFORMATION

1. Employee Code of Conduct (9 pages).

2. One (1) page EMC Employee Address Computer Listing dated November 21, 1983.

3. EMC Employee List (Management) indicates: Employee No., Social Security No., Date Hired, D.O.B., Salary, Insurance Amount. (8 pages).

4. EMC Employee List (Management) - similar to above (10 pages).

5. EMC Employee List - (Workforce) dated July 19, 1982 (17 pages).

6. EMC Employee List - (Management) dated July 19, 1982. (7 pages).

7. EMC Employee Statistics/Manpower Reports (5 pages) dates received 5/1/79; 1/31/82; 7/12/82; 11/15/82.

8. EMC Vehicle Report dated 9/21/82.

9. EMC Equipment File Listing (Trucks) dated 9/14/82.

10. Workforce Earning Codes/Salary Scale.

11. EMC Telephone Group List/Alphabetic List.

12. "Agenda" involving LABOR COSTS; M/S COSTS; ETC. (12 pages).

SECTION C - EMC GOALS FOR 1984

1. Memorandum to Joe Abbott from Bill Zeller dated November 18, 1983 RE: 1984 EMC Business Plan.
2. Joe Abbott - 1984 Goals/Objectives.
3. Memorandum to Joe Abbott from Don Childs regarding 1984 Goals/Objectives.
4. Memorandum to Joe Abbott from Myrle Tanner dated December 12, 1983 RE: Goals/Objectives/Accomplishments of 1983.
5. List of 1984 Goals/Objectives by Myrle Tanner.
6. Jack Butler (Employee Relations) - 1984 Goals/Objectives.
7. Wayne Jensen - 1984 Goals/Objectives.
8. Randy Price - 1984 Goals/Objectives.
9. Project Chart drawn on plain paper (1 page).
10. Memorandum to Jim Hamlin from Bill Zeller dated November 23, 1983 RE: 1984 EMC Business Plan.
11. Memorandum to Jim Hamlin from George Bell dated December 13, 1983 RE: 1984 Business Plan.
12. Same as above only with different handwritten markings.
13. Memorandum to Jim Hamlin from D.W. Bocook dated December 13, 1983 RE: 1984 EMC Business Plan.
14. Same as above only different handwritten markings.
15. Memorandum to Jim Hamlin from James Atwood dated December 12, 1983 RE: Recommendations/plans for the coming year.
16. Memorandum to Jim Hamlin from Evert Winder dated February 2, 1984 RE: 1984 EMC Business Plan.
17. Memorandum to Jim Hamlin from Keith Sinsel dated May 31, 1983 RE: Cost of Waste.
18. Memorandum to Jim Hamlin from Keith Sinsel dated June 8, 1983 RE: Record Material & Supply Cost.

19. Memorandum to Ray Christensen from Glen Beard dated February 9, 1984 RE: Revised Goals for 1984.

20. Memorandum to Ray Christensen from W.H. Curtice, Jr. dated February 9, 1984 RE: 1984 Goals.

21. Memorandum to Ray Christensen from Greg Cowan dated December 12, 1983 RE: Departmental Goals for 1984.

22. Memorandum to Ray Christensen from Greg Cowan dated February 13, 1984 RE: 1984 Goals with target dates for completion.

23. Memorandum to Bill Zeller from J.J.S. dated December 5, 1983 RE: 1984 EMC Business Plan.

24. Memorandum to Bill Zeller from Art Bruno dated February 3, 1984 RE: 1984 EMC Business Plan.

25. A four (4) page document titled "Priorities for Problems;" it is unknown who authored it. (35 items/areas of concern).

26. Memorandum to Bill Zeller from LeGrand Wilberg dated January 18, 1984 RE: Areas of interest to the Security Department for 1984.

27. One (1) page copy of three (3) handwritten memos with Bill Zeller's name printed thereon.

28. Copies of computer printouts (12 pages) identifying several areas:

    a. Safety Department
    b. Maintenance Department
    c. Security Department
    d. Accounting Department
    e. Industrial Engineering Department
    f. Employee Relations Department
    g. Material Control Department
    h. Purchasing Department

SECTION D - EMC POLICIES/PROCEDURES

1. Health & Safety Policy (4 pages).

2. Purchasing Policy Charter (30 pages).

3. Purchase Order System Implementation Decision Support Staff Findings initial meeting April 7, 1982 (5 pages).

4. EMC Chart of Accounts (5 pages).

5. Contract Administration Policy (27 pages).

6. EMC Benefit Package/"Administrative Services Agreement" (12 pages).

SECTION E - JAMES E. LOCKEY, M.D. INFORMATION

1. Correspondence between Scott Smith of EMC and James Lockey, M.D. of Rocky Mountain Center for Occupational and Environmental Health/Corporate Health Systems, Inc. beginning in the fall of 1981 RE: A pre-employment medical evaluation [(4) letters, (1) billing, (1) EMC check request].

2. Pre-Employment Medical Examination (15 pages).

3. EMC Pre-Employment Evaluation prepared by Corporate Health Systems, Inc. 202 W. 400 South, Salt Lake City, Utah. (42 pages).

SECTION F - EMC ENGINEERING INFORMATION

1. Positions/Employees identified (4 pages).

2. Engineering Organizational Chart (7 pages).

3. Excerpt from a questionnaire RE: Engineering aspects of an operation (6 pages & questions begin with number 48 and with number 205).

4. Deer Creek Mine - Engineering Projects

   a. Project Description (2 pages).
   b. Activity Description (5 pages).
   c. Organizational Chart marked "A".
   d. Organizational Chart marked "A-1".
   e. Organizational Chart marked "B".
   f. List - 1981 year to date construction costs marked "C" (4 pages).
   g. Photocopy of Coastal States Energy Co. (Skyline Project) maintenance complex of fourth floor dated fall 1979 marked "D".
   h. Engineering Organizations:
      1. Beaver Creek Coal Co.
      2. Plateau Mining Co.
      3. Valley Camp
      4. Southern Utah Fuel Co. (2 pages both marked "E".)
   i. EMC organizational chart for Engineering marked "F".

j. Analysis of Time Study dated June 9 - July 17, ? (no year given).
k. Deer Creek Mine - Survey Procedures - Mine Sites.
l. Deer Creek Mine - Control Line and Check Surveys.

SECTION G - MSHA ACCIDENT REPORTS

1. Report of Investigation (10 pages)
(Underground Coal Mine)
Serious Nonfatal Injury Roof Fall Accident
Little Dove Mine (I.D. No. 42-01393)
EMC - Orangeville, Emery County, Utah
April 19, 1982
by
Robert N. Ash, Coal Mine Safety/Health Inspector
Robert L. Baker, Coal Mine Safety/Health Inspector

2. Report of Investigation (13 pages).
(Underground Coal Mine)
Coal Mine Gas and/or Dust Frictional Ignition
Deer Creek Mine (I.D. No. 42-00121).
EMC - Huntington, Emery County, Utah
May 11, 1982
by
Joseph W. Darios, Coal Mine Safety/Health Inspector
John Marshall, Coal Mine Safety/Health Inspector (Electrical)

3. Report of Investigation (7 pages)
(Underground Coal Mine)
Noninjury Inundation Accident
Little Dove Mine (I.D. No. 42-01393)
EMC - Orangeville, Emery County, Utah
August 13, 1982
by
Dick K. Jones, Coal Mine Safety/Health Inspector

4. Report of Investigation (6 pages)
(Underground Coal Mine)
Mine Fire
Wilberg Mine (I.D. No. 42-00080)
EMC - Orangeville, Emery County, Utah
August 24, 1982
by
Dick K. Jones, Coal Mine Safety/Health Inspector

5. Report of Investigation (6 pages)
(Underground Coal Mine)
Noninjury Coal Mine (Bounce) Accident

Wilberg Mine (I.D. No. 42-00080)
EMC - Orangeville, Emery County, Utah
June 28, 1983
by
Robert L. Huggins, Coal Mine Safety/Health Inspector
Robert L. Baker, Coal Mine Safety/Health Inspector

6. Report of Investigation (7 pages)
   (Underground Coal Mine)
   Noninjury Unplanned Fall of Roof Accident
   Wilberg Mine (I.D. No. 42-00080)
   EMC - Orangeville, Emery County, Utah
   July 18 & 20, 1983
   by
   Robert L. Huggins, Coal Mine Safety/Health Inspector
   John R. Turner, Coal Mine Safety/Health Inspector

7. Report of Investigation (5 pages)
   (Underground Coal Mine)
   Non-Injury Inundation (by Surface Water) Accident
   Deseret Mine (I.D. No. 42-00988)
   Beehive Mine (I.D. No. 42-00082)
   Little Dove Mine (I.D. No. 42-01393)
   EMC - Orangeville, Emery County, Utah
   August 12, 1983
   by
   Dick K. Jones, Coal Mine Safety/Health Inspector

BINDER VOLUME NUMBER TWO (2).

SECTION H - EMC VENDOR MASTER LIST
dated December 29, 1983 which contains 1,050 vendors identified by:
- vendor number
- vendor name/address
- date of last transaction
- terms

SECTION I - UTILITY RATES AND REGULATION
A Look at Energy Economics & Energy Policy
A Study by the League of Women Voters of Utah
February 1984
Published by the League of Women Voters of Utah Education Fund

SECTION J - MISCELLANEOUS

1. EMC News Release dated March 22, 1984 RE: Des-bee-dove mine operations temporarily suspended.

2. A Study of the Perceived Image of EMC and Savage Brothers Industries - A Proposal
Prepared for EMC
by Don Alexander
October 20, 1982

3. A Monthly Report prepared in letter form by Dennis J. White, V.P. & General Manager, Braztah Corporation addressed to Gerald Hartley, American Electric Power Service Corporation for the month of October 1979. The letter is dated November 20, 1979.

4. List of Intrastate Permanent Common and Contract Carriers dated May 1984 which identifies:

    a. Record Number
    b. Name of Operator
    c. Address
    d. City
    e. State
    f. Zip Code
    g. License Number/Type (Common 1-7)

5. List of Intrastate Exempt Carriers dated May 1984 which identifies:

    same as above except g.
    g. License Number/Type (Class 1-3).

6. Copy of a computer printout (2 pages) indicating the words "ICCF Library File Maintenance" dated 1/3/84.

7. List of Records Retained on Micro-Fiche

8. Excerpts from a book/code concerning: (5 pages)

    a. accounting for benefit plans
    b. fiduciary responsibility (ERISA sections 401-414)
    c. unfair practices
    d. Utah Insurance Code

9. EMC - production figures dated:

   1/23/84
   1/24/84
   1/25/84

10. Letter - blank paper, no letter head, no signature, etc. dated March 30, 1983 RE: EMC receiving "incomplete deliveries."

11. Memorandum to W.H. Curtice from Joe Colosimo dated May 27, 1982 RE: RMC 820 Report.

12. EMC check number 1861 dated January 19, 1981 made payable to LaBelles' Distributing for the amount of $10,000.00 signed by Ray Christensen and John Parker. (back side copied)

13. EMC check number 2850 dated July 22, 1982 made payable to Cornelius Investment and Development Corporation for the amount of $5,622.26 signed by John Parker and Larry Erickson (back side copied).

14. EMC check number 2501 dated January 27, 1982 made payable to Savage Brothers, Inc. for the amount of $3,410.66 signed by John Parker only (it appears).

15. EMC "A/P INVOICE INPUT" form which identifies: vendor number, invoice number, invoice date, account number, amount, etc. Handwriting is illegible.

16. Emery County Documents (Castle Dale)

    a. Warranty Deed dated July 25, 1980 between LaVon/Marianne Day and Glade/Grace Hone RE: Emery County property located in Castle Dale.

    b. Easement dated August 5, 1978 between LaVon/Marianne Day and Castle Dale City RE: inspection/maintenance of water lines of said property in (a) above.

    c. Release of Mortgage dated August 15, 1975 between LaVon/Marianne Day and Castle Valley Federal Credit Union RE: property located in Castle Dale.

SECTION K - INSURANCE/SALARY CONTINUATION INFORMATION

1. EMC Documents

   a. EMC Salary Continuation Plan for __________ (name blanked out) dated 5/18/82 and signed by Dan Hartman; witnessed by Lonnie Hawkins (5 pages; 1 missing)

   b. Same as above except the plan is dated 2/4/82 (6 pages).

   c. Letter to David Reeves, Reeves Financial Services, from Dan Hartman, EMC, dated January 26, 1981 RE: Agent of Record.

   d. Letter from John Parker, Director of Employee Benefits to "whom it may concern" dated March 29, 1982 RE: CIMCO Insurance Co. as broker of record.

   e. Letter from John Parker to Jerry Lees dated April 9, 1982 RE: EMC employee pension plan-second amendment.

   f. Policy Amendment dated in August 1982 RE: Continuation of Coverage.

   g. Copy of hand written memo to John Parker (it appears) from ? (illegible) RE: EMC. Memo contains figures pertaining to the General/Utah accounts.

   h. Copy of hand written notes/figures pertaining to Beneficial Life, Pension Design, Reeves Financial.

   i. Document titled Company Insurance dated March 1, 1981.

2. Beneficial Life Documents

   a. Group Life Insurance Policy (14 pages)
      Renewable Term
      Non-Participating

   b. Advance Premium Deposit Agreement dated March 29, 1982 between EMC and Beneficial Life Co.

c. Beneficial Life Insurance Co. application for group policy for EMC (non-union employees)

d. Letter from David Reeves (Beneficial Life Insurance Co.) to Lonnie Hawkins (Pension Design, Inc.) dated March 10, 1981 RE: that verification of Beneficial Life computer illustrations prepared for EMC's salary continuation plan is accurate; attachment (36 pages).

e. Letter from Duane Gardner V.P./Marketing, Beneficial Life Insurance Co. to Dan Hartman, V.P., EMC dated April 2, 1982. (2 pages).

f. Combined Summary Analysis - Management Employees (D. Glenn Hawkins & Associates)

g. Combined Policy Analysis Summary for Workforce Employees (D. Glenn Hawkins & Associates)

h. Summary Pep Policy Analysis Combined Lives 195 Using a Variable Premium Outlay (D. Glenn Hawkins & Associates)

i. Summary Pep Policy Analysis Combined Workforce Group Using Variable Premium Outlay (D. Glenn Hawkins & Associates)

j. EMC Salary Continuation Funding Illustration Summary of Account Value.

k. Document titled: "We Have Set For Consideration The Following For The Executive Committee."

l. Preliminary List for Determination of Salary Continuation by monthly gross salary and total annual salary.

m. Expectancy and Probability of Death Among Selected Employees of EMC.

n. Illustration of Minimum Deposit Schedule.

o. Document titled "Adding Existing Benefit to New Program."

p. Flow Chart.
(shows Utah Account/General Account money)

q. Summary If Fully Insured --AND--BY Creating Side Fund With Guaranteed Benefit.

r. Letter from Elden Malmrose, Managing Director, Group Sales & Administration, Beneficial Life Insurance Co. to David Reeves dated March 4, 1982 RE: EMC Non-Union Group Term Contract No. 890048 with two (2) enclosures.

s. CHART - Competitive Cost Ranking of Insurance Companies.

t. Illustration of Death Benefits, Cash Values and Accumulated Premiums (Variable Whole Life)

u. CHART - How Can the Company Get Most of its Money Back? (two (2) charts using different figures)

v. Minimum Outlay Illustration prepared for _____________, age 31, Fifth Dividend Option-Plan Ad.

w. Same as above except: Dividend to Additions.

x. Minimum Outlay Illustration prepared for W. LaVon Day, age 43, Dividend to Additions.

y. Same as above except: Fifth Dividend Option Plan Ad.

z. Minimum Outlay Illustration prepared for Ray A. Jensen, Age 31, Dividend to Additions.

aa. Same as above except: Fifth Dividend Option Plan Ad.

bb. Minimum Outlay Illustration prepared for Neal Savage, age 47, Fifth Dividend Option Plan Ad.

cc. Same as above except: Dividend to Additions.

dd. Document with Beneficial Life Insurance Co. letter head and address to EMC c/o Lonnie Hawkins in Provo, Utah RE:

1. Workforce Annual Premiums Due
2. Management Salary Continuation Premiums Due
3. Total Remittance due 1982 annual premium.

NOTE: Three (3) other similar documents exist to indicate check issuance support rather than an "EMC Check Request."

ee. Fifty-five (55) check/check vouchers exist in this section from EMC to Beneficial Life Insurance Co.

ff. Thirty-six (36) EMC check requests to Beneficial Life Insurance Co. exist in this section excluding the four (4) documents mentions in (dd).

3. Pension Design Documents

   a. Letter from Lonnie Hawkins to Dan Hartman dated April 14, 1982 RE: A "package of information" listing (13) items.

   NOTE: This list of 13 identifys numerous documents and their origin in this SECTION K- INSURANCE/SALARY CONTINUATION.

   b. Nine (9) check/check vouchers to Pension Design, Inc. from EMC.

   c. Five (5) backup documents consisting of a premium notice, billings, statements.

4. Prudential Life Insurance Co. Documents

   a. Letter from Grant Dayley, Prudential Life, to Lonnie Hawkins, Pension Design, dated February 18, 1981 RE: proposal responses on seventeen(17) lives of an Executive Group; illustrations attached (7 pages).

5. Reeves Financial/Insurance Service Documents

   a. Letter from David W. Reeves, President, Reeves Financial, to Dan Hartman, EMC, dated April 14, 1982 RE: Summaries provided by Beneficial Life Co.

   b. Chart showing $3,268,080 Face Amount and Premium/Equity listings.

   c. Chart showing Beneficial Life Insurance Co. current rate schedule - Heritage Professional Estate Plan.

d. Letter from David W. Reeves, Reeves Financial, to Elden Malmrose, Beneficial Life, dated January 30, 1981 RE: Reeves appointed as Agent of Record by EMC. (No enclosures located)

e. EMC check No. 009843 to Reeves Financial Services dated August 27, 1981 in the amount of $29,075.00

6. New York Life Insurance Co. Documents

   a. Letter from Frank Ericksen, New York Life, to Lonnie Hawkins, Pension Design, dated March 5, 1981 RE: Illustrations of 17 lives of an Executive Group; attachments. (16 pages)

7. Guardian Life Insurance Co. Documents

   a. Memo from Guardian Life Policy Owner Service to Lonnie Hawkins dated March 6, 1981 RE: policy illustrations for premium/cash value calculation for face amount over $50,000.00; attachments. (16 pages)

   b. EMC check request for Guardian Life Insurance Co. dated 6/8/82.

   c. EMC check voucher to Guardian Life in the amount of $431.76 date not legible.

8. Greer Associates Documents

   a. Letter from Charles E. Greer, Greer Associates, to John Parker, EMC, dated April 15, 1[illegible] RE: Review of EMC Salary Continuation Plan.

   b. Billing for Services by Greer Associates for risk management services dated February/March 1982.

   c. EMC check voucher for the above billing by Greer for $850.00 dated April 9, 1982.

   d. Billing from Greer Associates to EMC dated August 2, 1982 for the amount of $9,942.00 which is sub-divided into the General Account ($4,986.30) and the Utah Account ($4,955.70).

e. EMC check number 2920 dated August 30, 1982 in the amount of $4,986.30 to Greer Associates.

f. EMC check number 016542 dated September 9, 1982 in the amount of $4,955.70 to Charles E. Greer, Insurance & Risk Management.

g. Billing to EMC dated June 2, 1982 from CIMCO in the amount of $15,950.00.

h. EMC check number 014552 to CIMCO (Commercial Insurance Management Co.) dated June 15, 1982 in the amount of $15,950.00.

i. Billing to EMC from Greer for April 1982 services in amount of $200.00.

j. EMC check voucher in regard to above.

k. Billing to EMC from CIMCO dated April 9, 1982 in the amount of $849.00.

l. EMC check voucher in regard to above.

m. Billing to EMC from Greer Associates dated September 28, 1982 in the amount of $18,196.00.

n. EMC check voucher in regard to above.

o. Billing to EMC from CIMCO (Greer) dated July 14, 1982 in the amount of $33,608.00.

p. EMC check voucher in regard to above.

9. James Banasky Insurance Agency Documents

a. Cover Sheet.

b. Title Sheet of Confidential Proposal.

c. EMC employee list identifying: age/sex, annual benefit, face amount, annual premium (16 pages).

d. Same as above except this list has no hand writing/or figures marked on it and contains 17 pages. (1 page is missing from c above)

10. Wasatch Advisors, Inc. Documents

    a. Memo/Billing from Wasatch to EMC Pension Plan dated August 4, 1982 in the amount of $4,198.62 RE: Professional Services rendered.

BINDER VOLUME NUMBER THREE (3)

SECTION L - HARTMAN DOCUMENTS

1. Hartman Construction, Lander, Wyoming, billings AND personal check from Don Childs to Hartman Construction dated December 3, 1981 in the amount of $2,000.00.

2. EMC check voucher to Dan Hartman signed by Dan Hartman dated May 20, 1982 in the amount of $1,000.00. Voucher copy is illegible but has the following comment written on it, "Repay Gen/Acct. by May 31, 1982 Officer Advance."

3. EMC check to Grant Thorn signed by Dan Hartman/Glen Beard dated December 18, 1981 in the amount of $125.00.

4. EMC check request dated November, 3 1981 for foundation, footings, walls, labor, materials - Dan Hartman house in the amount of $2,971.80 made payable to Wall Contractors/Lee Madsen.

5. EMC check voucher (regarding the above) dated November 3, 1981 signed by Dan Hartman in the amount of $2,971.80.

6. EMC check number 2348 regarding [illegible] above.

7. EMC check number 2371 payable to Century Savings & Loan in the amount of $783.80 dated November 16, 1981 signed by Dan Hartman/Glen Beard.

8. EMC check number 2581 dated March 22, 1982 payable to Cornelius Investment & Development Company in the amount of $1,000.00 signed by Dan Hartman/John Parker.

9. EMC check number 2716 payable to Dan Hartman signed by Dan Hartman in the amount of $1,000.00 dated May 20, 1982. (SEE (2) above for voucher copy)

10. EMC check number 2657 payable to First Federal Savings in the amount of $32,991.37 dated May 7, 1982 signed by Dan Hartman/John Parker.

11. EMC check number 2918 payable to Brigham Young University in the amount of $50,000.00 dated August 30, 1982 signed by Dan Hartman/Larry M. Erickson.

12. EMC check number 2953 payable to Westinghouse Credit Corporation in the amount of $56,595.83 dated September 15, 1982 signed by Dan Hartman/Larry Erickson.

13. EMC check number 2899 payable to Westinghouse Credit Corporation in the amount of $62,836.57 dated August 18, 1982 signed by Dan Hartman/Larry Erickson.

14. EMC check number 2869 payable to Westinghouse Credit Corporation in the amount of $55,016.35 dated July 29, 1982 signed by Dan Hartman/Larry Erickson.

15. Carbon County Documents (Wellington)

    a. Assignment of Trust Deed by D. Glenn Hawkins to Utah Valley Radiology Associates, et al. dated January 25, 1982 RE: Hillcrest Estates property.

    b. Same as above except by Lonnie G. Hawkins.

    c. Deed of Trust made August 14, 1981 among Dan/Susan Hartman and Zions First National Bank; RE: Hillcrest Estates.

    d. Deed of Reconveyance dated March 18, 1982 between Zions First National Bank and Dan/Susan Hartman RE: Hillcrest Estates.

    e. Warranty Deed to Dan/Susan Hartman from Harold/Emily Marston dated April 14, 1981 RE: Hillcrest Estates.

    f. Warranty Deed (Hartman Grantor & Grantee) dated February 6, 1982 RE: Hillcrest Estates and as "Tenants in Common."

    g. Full Reconveyance dated May 11, 1982 RE: Hillcrest Estates.

h. Trust Deed dated April 30, 1982 between Dan/Susan Hartman and Far West Bank RE: Hillcrest Estates.

i. Trust Deed dated November 25, 1981 between Dan/Susan Hartman and Douglas W. Morrison with D. Glenn/Lonnie HAwkins as beneficiary RE: Hillcrest Estates.

j. Deed of Reconveyance between Harold/Emily Marston and Commercial Security Bank dated April 30, 1981; RE: Hillcrest Estates.

k. Deed of Partial Reconveyance dated April 16, 1981 between Harold/Emily Marston and Commercial Security Bank RE: Hillcrest Estates Subdivision.

l. List - hand written of the above events; author unknown.

m. Photocopy's of County records confirming some of the above events - PLAT. (6 pages)

16. Emery County Documents (Ferron)

a. Trust Deed dated November 25, 1981 between Dan/Susan Hartman and Doug Morrison (trustee) Glen/Lonnie Hawkins Associates, Inc. (beneficiary).

b. Assignment of Trust Deed dated January 18, 1982 between D. Glen Hawkins and the trustees of Utah Valley Radiology, Inc. et al. RE: Emery County property.

c. Same as above except executed by Lonr Hawkins for Lonnie Hawkins & Associates, In

d. Deed of Reconveyance dated May 20, 1982 from Doug Morrison (attorney) and Dan/Susan Hartman RE: Emery County property.

e. Warranty Deed dated May 18, 1978 from Gil/Heidi Bowden to Dan/Susan Hartman RE: Emery County property.

f. Trust Deed dated May 18, 1978 between Dan/Susan Hartman and First Federal Savings & Loan Assoc. RE: Emery County property.

g. Deed of Trust Non-Assumption Agreement dated May 18, 1978 between First Federal Savings & Loan Assoc. and Dan Hartman RE: Secure a promissory with the same in amount of $45,000.00 using certain property in Emery County.

h. Photocopy's of County records confirming some of the above events - PLAT (12 pages).

SECTION M - MINE CITATIONS - WILBERG

1. Letter Reports RE: Summary of Inspection(s) (MSHA) totaling (48).

2. Mine Citations/Orders/Continuations (MSHA) totaling (264).

3. Bi-Monthly Dust Sampling Reports totaling (9).

4. Gas/Air Sampling Receipts totaling (14).

SECTION N - MINE CITATIONS - DEER CREEK

1. Letter Reports RE: Summary of Inspection(s) (MSHA) totaling (35).

2. Mine Citations/Orders/Continuations (MSHA) totaling (315).
NOTE: The (315) citations extend into Binder No. 4.

BINDER VOLUME NUMBER FOUR (4)

3. Bi-Monthly Dust Sampling Reports totaling (11).

4. Respirable Dust Laboratory Report (MSHA) totaling (1).

5. Dust Sampling Receipts totaling (15).

6. Gas/Air Sampling Receipts totaling (16).

7. Monthly Accident Report for March 1982. (5 pages).

8. U.S. Department of the Interior Bureau of Mines, Notice to Provide Safeguards to Peabody Coal Company.

a. Dated November 25, 1975.
b. Dated June 6, 1973.

SECTION O - MINE CITATIONS - DESERET

1. Letter Reports RE: Summary of Inspections (MSHA) totaling (14).
2. Mine Citations/Orders/Continuations (MSHA) totaling (100).
3. Bi-Monthly Dust Sampling Reports totaling (4).
4. Dust Sampling Receipts totaling (1).
5. Gas/Air Sampling Receipts totaling (7).

SECTION P - MINE CITATIONS - BEEHIVE

1. Letter Reports RE: Summary of Inspections (MSHA) totaling (14).
2. Mine Citations/Orders/Continuations (MSHA) totaling (123).
3. Bi-Monthly Dust Sampling Reports totaling (4).
4. U.S. Department of Labor MSHA Laboratories analysis of dust samples collected June 28, 1983 totaling (1).
5. Dust Sampling Receipts totaling (3).
6. Gas/Air Sampling Receipts totaling (5).

SECTION Q - MINE VIOLATIONS - LITTLE DOVE

1. Letter Reports RE: Summary of Inspection(s) (MSHA) totaling (12).
2. Mine Citations/Orders/Continuations (MSHA) totaling (54).
3. Gas/Air Sampling Receipts totaling (1).

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

---oOo---

#8

In the Matter of the Application of UTAH POWER & LIGHT COMPANY for Approval of its Proposed Electric Rate Schedules and Electric Service Regulations.

Case No. 84-035-01

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXCERPT TRANSCRIPT OF WITNESS SIMONELLI

Salt Lake City, Utah

Friday, August 10, 1984

10:10 A.M.

BEFORE:

BRENT H. CAMERON, Chairman, Public Service Commission of Utah;

DAVID R. IRVINE, Commissioner, Public Service Commission of Utah; and

JAMES M. BYRNE, Commissioner, Public Service Commission of Utah.

APPEARANCES:

(As heretofore noted in the record.)

--oOo--

Utah Power & Light coal case to serve as a general administrative assistant to the senior executives and perform the internal audit function.

In that position I was hired to "assure corporate integrity," "assure employee integrity," "Examine, evaluate and analyze and improve upon company procedures" per May 11th, 1982, memo. I worked in this capacity from May, 1982 to April, 1984. In this or associated positions, I worked from April, 1982 performing as project coordinator for software implementation and as administrative assistant to Neal Savage, President and Bill Zeller, Senior Executive of Emery Mining Corporation.

I was told my function as internal auditor in Emery Mining Corporation obviated the need for outside investigative or audit functions from the Division of Public Utilities. I saw part of my role as that of assisting Utah Power & Light, the Public Service Commission and the ratepayers by assuring that no excessive charges would be incurred by Emery Mining Corporation.

In the two years that I was employed by Emery Mining Corporation I was only permitted to perform four substantive audits, all occuring within the first seven months of my employment in 1982. After that, I did not and was not allowed to perform any additional audit functions.

In January of 1984, desiring to re-establish the internal audit function for which I was primarily employed, I suggested in writing approximately 39 other areas for internal audit. After numerous conversations with the senior executives, I was still not allowed to audit any of those functions, and effective April 1984, I was part of the reduction in force accompanying the Des-Bee-Dove mine fire.

Q. Excuse me, Mr. Simonelli at this point. You were terminated by Emery Mining Corporation in 1984, and has that affected the testimony that you are about to give or that you're giving this morning?

A. Factually, no.

Q. Thank you. Proceed, please, with your statement.

A. I was employed with Emery Mining Company when this Utah Power & Light rate increase case was filed in January of 1984. I remained in the employment of Utah Power & Light's coal mining contractor, Emery Mining Corporation for approximately four months after this rate case was filed, and continued to observe the daily operations of the coal mining contractor. During this period and based upon my observations of Emery Mining Corporation, as an employee and as an internal auditor, it is my recommendation that the Public Service Commission should immediately order termination of the contract between Savage Brothers and require Utah Power & Light to competitively and openly bid the coal mining operation and transportation of coal contracts.

Secondly, the Public Service Commission should not allow Emery Mining Corporation to pass on to Utah Power & Light some of the costs of coal that are being paid by Utah Power & Light and charged to ratepayers. In this rate case, the Public Service Commission should withhold allowance of certain costs associated with the mining of coal until it has an opportunity to do an open and thorough audit of Utah Power & Light's coal mining operation, Emery Mining Corporation and other Savage Corporation Companies.

The Savage Brothers organization itself has done nothing of significance to improve the operation or reduce costs during the time of my employment. I observed that only those individuals who had previous mine management experience caused actual cost reductions and coal mining production improvements in some cases in spite of the influence of the Savage Brothers organization.

Let me comment briefly about the regulatory process of the coal operations of Utah Power & Light. It has been my observation that the Public Service Commission has been apparently negligent, certainly less than diligent, and it has come to my -- has been my observation that the Division of Public Utilities has not performed any direct audits of Emery Mining Corporation during the time that I was employed with Emery Mining Corporation. During the time that I was employed with Emery Mining Corporation, the Division of Public Utilities did not once perform an on-site audit of Emery County sites. There was no evidence in the company's office to indicate that the Division of Public Utilities has made an on-site visit for extensive auditing of the books and records of Emery Mining Corporation or doing a management performance audit of the mining of the coal.

During the time that I was employed with Emery Mining Corporation, the state regulatory commission has been negligent, and until it takes action to assure that the customers, that they are being protected, at least a part of the coal mining costs should not be allowed in this rate case.

I believe that prudent financial and managerial care was not taken by the Savage Brothers organization in handling the coal-mining contract.

My purpose in testifying today is to try to alert the Public Service Commission, which apparently has remained asleep during the last two years, that Emery Mining Corporation under the direct control of the Savage Brothers has not been performing its financial and management responsibility very well. The Savage Brothers should be totally eliminated from the coal production operation and the actual operations personnel on site in Huntington can be retained. This will substantially and immediately reduce the costs of coal by at least $1 million annually. In my opinion, the Savage Brothers organization has done nothing to benefit the ratepayers. In my opinion and based upon my observations over the last two years, Savage Brothers have operated Emery Mining Corporation solely for their own financial benefit.

A meeting earlier this — meetings earlier this year people I trusted implicitly who were former government agents of high executive and commission level debriefed me saying they were going to screw Utah Power & Light along with me by using this information and making some money out of it. They are in fact hired by Utah Power & Light presently and have in fact obtained every bit of this testimony.

MR. OSHIE: Q. Mr. Simonelli, it's my understanding that you have, in fact, documentation pertaining to the recommendations that you made in the summary of your testimony which you had presented before the Commission; is that true?

A. I hate to ask you to repeat that because --

Q. Did you bring with you today documents which support your testimony that you had presented to the Commission as part of Public Witness Exhibit No. 3?

A. Yes, insofar as the volume and substance of these documents can be excused for the lack of other information which was shred by Emery Mining upon my termination.

MR. OSHIE: Commissioner, I'd like to at least state that these documents can be made available to the Commission at your request. I would certainly feel that that would be appropriate under these circumstances to give them -- if you'd like, we could go through each document and present testimony and support of each, but --

COM. CAMERON: What documents?

MR. OSHIE: -- knowing that would take a great deal of time under these circumstances --

COM. CAMERON: What documents are we speaking of?

THE WITNESS: If I would be permitted to go through the first five items, I'd believe you'd have a feel for it.

COM. CAMERON: Just a second. The documents, is that that pile over there?

THE WITNESS: Uh-huh.

COM. CAMERON: Is that what, Mr. Oshie, you're presenting to the Commission to look at?

MR. OSHIE: Those are the documents Mr. Simonelli has brought with him and either those documents as originals can be presented to the Commission or a copy of such can be presented to the Commission or to any of the parties.

MR. FORSGREN: Mr. Chairman, if it please the Commission, I assume that there are substantial documents for Utah Power & Light Company. We would like a copy of all those together with any Mr. Simonelli may have and not brought with him today, and we'd like, those as soon as we could in aid of cross-examination.

THE WITNESS: All of the documents were obtained while employed with Emery Mining Corporation, have been supplied to certain of its investigators and in fact, has been in their possession all along.

MR. FORSGREN: Well, that's fine. I'm just making a request for that information.

THE WITNESS: You can have everything you want.

MR. FORSGREN: Thank you:

COM. CAMERON: I don't mind your going through the first five items. We don't have today 82 minutes or whatever the time would be required for you to present in detail all of these items, but before you do, I guess I have to ask the parties, I've already stated that Mr. Simonelli presented nothing like this to me, that came before me and asked for in employment, my perception as to whether or not I was interested in it or not. It's somewhat different than Mr. Simonelli's, but I did attempt to explain the legal difference since the change in theprocedure of the state law here as to employment with the Commission and its staff and if so, that you could not testify in a rate proceeding.

As I stated before, I suggested that you talk to Mr. Lambert, which apparently you did. Your statement about the meetings held, I did not meet with Mr. Lambert or Mr. Blundell with you. You weren't indicating that; is that correct?

THE WITNESS: No, I was not indicating a single meeting. I was indicating independent meeting. Please excuse the inaccuracy in that area.

COM. CAMERON: That's fine. I just want to make sure that everybody understands.

If there are any objections to my participating in ruling on any of these things because I've been contacted by him prior, I'd like the parties to so notify me.

Why don't you take the first five items that you've talked about and then we'd better talk about a scheduling procedure where you can be cross-examined on this issue because it will obviously have to be next week.

THE WITNESS: Number one, one of the documents, I only have one item, if I can go get it.

As part of my original charter of activities, I was informed by Mr. Neal Savage, after about a month's employment acting as the director of the NIS Computer Department, that I would bemade the internal auditor. And in part of that instruction I was informed that I should make a weekly report to Mr. Savage himself and retain no copy of my ordered findings for that week; I did not retain, but one of those confidential type reports, I believe, at the time, from my instruction, conversation and understanding with Mr. Savage, that he wanted full and open information from me.

Conversation was, "Mr. Savage, do you want to know black is black or black, white, green, polka-dot? What is your position? Tell me your position."

"Tell me black is black, white is white. Don't lie. Tell me the truth. I want to know all of it." I took that approach. I told him that I thought one of his senior executives was a crook. That was my words to Mr. Savage. Mr. Savage said he trusted the individual and until I proved him different, he would continue to trust the man. And I asked Mr. Savage if he is giving me access to go and dig, and he said, "by all means, do so." I did. I wrote a confidential memo to Mr. Savage and had several conversations with high-level executives at Emery Mining, but Mr. Dan Hartman, by use of his subordinates, eliminated from the bid prospects on an insurance policy Equitable Life Insurance, and included the activities of a D. Glen Hawkins and Lonnie Hawkins and Reeves Financial Institution in Provo, and I have much detail into it. I'm not going to get into it testimony. I do hate personal hand-written notes and other items, but the bottom line is, Hartman received a $110,000.00 loan from this company on an already encumbered personal resident, totalling $175,000.00 in loans on property that was worth $80,000.00. Hawkins naturally got the contract. Equitable was pushed out.

I talked to three Equitable agents, one in New York, two in Utah. I brought this to the public eye. He went so far as going on television with it, and I have that document here. It's already presented to the Attorney General's Office in the State of Utah.

MR. OSHIE: Q. Mr. Simonelli, what was the result of having, as you stated, Equitable pushed out from the insurance deal? Did it amount to a greater charge to Emery Mining for that insurance?

A. They were selling -- excuse me. Emery Mining was purchasing whole life insurance, which has a cash value, and they were using this cash value to create capital for the Savage Brothers related organizations. Emery Mining owns no assets. That's a facilities management-type company. They didn't need any capital in Emery Mining Corporation. The Savage Brothers, however, did need capital, and they used this vehicle to get money. Yes, it cost the ratepayers an excessive amount of money.

COM. CAMERON: Excuse me. You indicate you've given this to the Attorney General and --

THE WITNESS: Correct.

COM. CAMERON: -- some time ago, and do you know what the Attorney General did with it?

THE WITNESS: I cannot speak for the Attorney General's Office, but it's my understanding that it is under active investigation as it is also with the State Insurance Division or Department.

COM. CAMERON: Okay. And your contention of including it for our consideration is not that we have anything to do with that, is that that's a reason that we should embark upon requiring Utah Power & Light to bring someone else in to manage their mine; is that correct?

THE WITNESS: Bottom line, yes.

COM. CAMERON: All right.

THE WITNESS: I'll go to the next item.

1984, audit proposal, as you might be able to detect, I did, in fact, prepare this as late as --

COM. CAMERON: Excuse me. We can't get that on the record.

THE WITNESS: Do you want me to speak up or do you really care?

MR. OSHIE: Q. Mr. Simonelli, please speak into the microphone so that all individuals in the room can hear that and also it certainly aids the court reporter in making a record in this matter.

A. The memo to which I am referring is dated January 27, 1984, and it was as a direct result of my desire to continue in the auditing function of Emery Mining Corporation to propose the re-establishment of the audit function, which was diverted by my reassignment from the auditing function to this project implementation of software.

Prior to my writing this memo and at that direct request of Mr. Bill Zeller, Senior Executive Officer of Emery Mining Corporation, I was instructed in the following way: "Let's find out how crooked the Savage organization really is. You include in this memo, which you are proposing to write, the salary continuation plan, and we'll se what they do."

Well, I was willing to be the sheep, either being led to slaughter or venerating the actual honest of the operations people at Huntington, which I am still convinced does exist. I have very little doubt in my mind as to the people operating the company in Huntington, the mining people, the administrative people, the operations people by and large. Savage Brothers have a ruthlessness about them and would allow these people to be sacrificed.

COM. CAMERON: I'm sorry, Mr. Simonelli. Just a moment This is not the forum to make public announcements about people. Tell me why this 1984 audit proposal, number two, would aid this Commission in making a determination as to how it relates to Utah Power & Light's rates that they have suggested. I mean, I don't want to just provide you with a public forum to make your accusations against people.

THE WITNESS: The memo was written, disregarded. It naturally included items that should have some cost influences and impact on reducing the cost of coal, thus reducing the cost of Utah Power & Light. Many conversations between myself and the executives of the company did not result in one of these items being addressed. I submitted in detail a substantial suggestion of auditing engineering function, a detailed presentation of several pages of questioning that should be addressed by the power by the Emery Mining Corporation; also disregarded, proposing in detail, in-depth audits of the engineering function.

It should be noted that one of the suggestions I had was to analyze the accuracy of mine maps. They were old and outdated. As a result of old and outdated maps, some serious losses, in fact, did occur during the mine fire at Des-Bee-Dove

Mine, partially because of the inability for them to read and have accurate, updated maps. So my audit approach was one to get all the areas, which impacted costs to the forefront of the attention of the executives. It was disregarded. And as late as March, 1984, when I asked to be allowed to conduct and perform some of these audits, I was informed that all they wanted me to do was administrative work and some detail writing for the executives, and if that's what I was satisfied doing for the next three to five years, that's what they wanted me to do. Approximately ten days later, I was terminated.

So numbers two and three, the audit proposal and the engineering audit proposals have been covered. Essentially, the Hartman deal, as I call it, was reviewed.

Number five, the confidential Des-Bee-Dove Mine fire report, part of the requirements by federal law in an emergency situation of mining requires that they keep track of who goes in and who comes out of a coal mine, particularly when there's a fire in there. It wasn't until several weeks after the fire actually the ins and outs of the rescue crews that were going in to fight that fire conditions. I was told to do it so that the union people could be given the document when, in fact, the company had not maintained a proper log of the crews going in and out, yet told the union they had. What they're doing is creating a management disaster there and Utah Power& Light is either oblivious to it or indifferent to it, and I'm trying to bring out the point in this issue.

Particularly with regard to number one again, and I'll go back to number one and I'll let you people do what you need to do to me, terminating the auditors, by putting him underground again, not allowing him to conduct any operations, audit, circumventing my interests in doing internal audits by reassigning me, particularly after pointing out that one of the key individuals was a crook, so I thought, and the eventual termination of me as an internal auditor revealed to me a total disinterest on the part of Savage Brothers organization to cut costs and improve productivity, and it is as a direct result of the people actually there in Huntington that any of these costs, reductions, and improvements have been made. And I will stand strongly on those people. They had performed admirably under the conditions and circumstances which had been their clout.

Q. Does that conclude your testimony, Mr. Simonelli?

A. Other than the fact that I might be asked questions and will be getting into some of these other areas. I would like to read these all in, but you're telling me we don't have time to do that.

COM. CAMERON: The Commission has another hearing at 2:00 P.M. It's approaching the lunch hour. We've marked this as an exhibit. It is part of the record in this proceeding, so I don't think it's necessary to read each item in. If the item are brought before the Commission for some sort of decision by us or analysis by us as to whether or not we need to do something in this proceeding, of course, we're going to have to look at them in detail.

I think what we have to do at this point, Mr. Oshie, is you must take this document file, provide copies to those parties who desire it, and also, I would suggest, you talk with the witness whom I'm going to assume is your witness, if you paid for him to come in here or not, and I'm going to say that you have got to present this in a way that the Commission can either analyze it in this proceeding and/or tell us if you recommend that this be done in a different proceeding, which may well be the only way to do it, is petition for a hearing on this type of thing.

The Commission notes that its decision in the coal case is still pending. If necessary, that case could be reopened, possibly. However, my preference would be, I believe, to start a new case. If it is something that needs to be done in this proceeding so that we can make a determination as to certain revenue requirements of the company then I want to present it in this case. We do have time constraints, however.

All right, at this time, I think we should just go off the record and discuss when Mr. Simonelli will be available next week for cross-examination, if that's necessary, so we'll go off the record.

(Discussion off the record.)

COM. CAMERON: Let's go back on the record.

We'll be in recess in this proceeding until 10:00 A.M., Monday, but remember that we have this afternoon the subsidiary issue at 2:00 for those of you who are interested. I believe that Monday was the date that we had set -- did you say Mr. Dunn could not be here Monday?

MR. FORSGREN: Yes. He could be here Tuesday. We do have other witnesses that we need to go forward with on Monday, Mr. Bryner and Ms. Faigle.

COM. CAMERON: Is that acceptable to the parties, we'll proceed with Mr. Bryner and Ms. Faigle on Monday, move to the Division witnesses, if necessary, that afternoon?

MR. FORSGREN: I'm sorry. I neglected to mention that Shelley's also testifying in Idaho on Monday, so she wouldn't be available Monday. Mr. Bryner would be. Those other two could be available Tuesday.

MR. RICH: The Division witnesses are ready, Mr. Chairman.

COM. CAMERON: We could proceed with Division witnesses after we have Mr. Bryner on Monday morning. We've set a time for Mr. Cichetti on 10:00 A.M. on Tuesday, is that correct, and your witness, Miss Hancock --

MR. OSBIE: Will be here on Thursday. Mr. Timmons --

COM. CAMERON: Mr. Timmons will be here on Tuesday as well, is that not correct?

MR. OSBIE: He'll be here Tuesday.

CONSULTANT AND INVESTIGATIVE AUDITOR

PROPOSAL TO

THE STATE OF UTAH, COMMITTEE OF CONSUMER SERVICES

FOR THE

IDENTIFICATION OF SIGNIFICANT AREAS OF COST REDUCTION

AND IMPROVEMENT INVOLVING UTAH POWER AND LIGHT

AND ITS MAJOR COAL SUPPLIER - EMERY MINING CORPORATION,

A SAVAGE BROTHERS CORPORATION

FROM

JAMES J. SIMONELLI

Utah Power & Light Company has a significant number of contract relationships, which in the past several years have come under increasingly more vocal criticism by the media and rate paying public. The significance of this fact is at least in part the result of continued consumer frustration at rate increases, rumors of waste and mismanagement, Public Service Commission inability or unwillingness to take firm actions to mandate cost reductions and the seemingly endless red tape and the apparent delaying bureaucratic paper shuffling that occurs when an issue of substance surfaces.

The historical investigative record of the Public Service Commission is lacking, as far as results are concerned. Rather than investigating and verifying the actual need and legitimacy of Utah Power & Light and Emery Mining Corporation related expenses, charges, methods of operations and payments, the Public Service Commission agreed to allow Utah Power & Light and Emery Mining Corporation to take care of their relational auditing needs voluntarily without outside review by the Commission or State Regulating Agency.

Emery Mining Corporation has no internal auditor. The apparent meandering management tactics used by Emery Mining hindered the actual performance of any Internal Audits in 1983 and audits proposed for 1984 were summarily disregarded with the resultant termination of the Internal Auditor.

Only "Book" audits and cursory "paper chase" reviews have been performed to date by the Public Service Commission and Utah Power & Light regarding the Emery Mining Corporation/Utah Power & Light relationship. Resources of all forms and types must be employed when gathering the facts of the real intention and design of Emery Mining Corporation/Utah Power & Light Company Management actions, decisions and contracted relationship.

There are significant weaknesses and inefficiencies in the contractual relationship between Utah Power & Light and Emery Mining Corporation. The intent of this proposal is to establish the acceptance of a consultant/investigative auditor relationship between James J. Simonelli and the Committee of Consumer Services for the purpose of identifying historical, existing and projected shortcomings, weaknesses and deficiencies in the Utah Power & Light/contractor relationship with specific attention given to Utah Power & Light/Emery Mining Corporation.

There are going to be varying degrees of success in the multi-faceted approach outlined in this proposal. Some results will be achieved without documentary proof thus obviating the need for official intervention in obtaining documentary evidence. Certain successes will be achieved through and dependent upon interviews, public records, available information sources of a confidential nature and personal contacts and knowledge.

Other results will be partially or significantly dependent on obtaining documents and data and as such will be successful to the extent the required items can be obtained with official assistance and intervention.

Depending upon your requirements and purposes the areas and subjects of proposed investigation can be expanded or condensed to suit the needs of the Committee on Consumer Services.

The proposed areas of consultant/investigative audit work are as follows:

I. Continued monthly lease payments for lost or non-existent equipment.

II. Employee exit interviews

III. Nepotism/favoritism toward vendors and in employment policy.

IV. Personal/non-business use of company trucks by employees.

V. Investigation and summary of fines paid due to violations and citations from MHSA inspections.

VI. Premature retirement of capital equipment and the resultant increase in amortization costs.

VII. The disposal of scrap.

VIII. The health and benefits insurance programs - management and review process.

IX. The significance of ash (rock) content to costs, the mining plan, the power plant equipment, etc.

X. Mine management, the mine plan and the development of reserves.

There are other significant areas worthy of committee attention but the above outlned items should afford ample choices for issues of highest interest at this time.

An intricate part of this proposal for service is my coincidental availability to the committee to perform investigative audits as need or requirement dictates.

The cost of my services is based on a monthly fee of $4,000.00.

My billing month will consist of no less than 240 hours of actual investigative/consultive work.

Hours in excess of 240 per month will be charged at a $500.00 daily rate.

While I prefer to become engaged for several months at a time I will accept a two month minimum committment at this time.

Modest pre-approved expenses for travel, lodging, sustenance and incidental charges will be billed as incurred.

I am confident that I can serve well the public and committee interests in a unique and successful way.

I look forward to discussing our mutually beneficial relationship.

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UN

AP-UP&L-INSURANCE, FROM RICK SHENKMAN, KUTV

F. Ed

(SALT LAKE CITY) -- THE STATE'S CONSUMER ADVOCATE SAYS UTAH POWER AND LIGHT IS USING RATEPAYER MONEY TO BUY INSURANCE FOR MANAGEMENT EMPLOYEES OF EMERY MINING.

EMERY MINING IS UNDER CONTRACT TO MINE COAL FOR UTAH POWER.

CONSUMER ADVOCATE JOE INGLES SAYS EMERY MINING SHOULD PAY FOR ITS EMPLOYEES' INSURANCE ITSELF. BUT HE SAYS EMERY'S CONTRACT WITH UTAH POWER CALLS FOR THE UTILITY TO PAY THE COST.

FORMER EMERY MINING AUDITOR JIM SIMONELLI SAYS HE WAS TOLD THE PURPOSE FOR THE PLAN IS TO RAISE MONEY FOR THE MINING COMPANY. SIMONELLI SAYS WHEN AN EMPLOYEE DIES, EMERY MINING RECEIVES A LUMP SUM PAYMENT FROM THE INSURANCE COMPANY. BUT IT MAKES PAYMENTS TO HEIRS ON AN INSTALLMENT BASIS. IT IS FREE TO INVEST MOST OF THE MONEY.

SIMONELLI CONTENDS HE WAS TOLD OF THE PLAN BY FORMER EMERY EXECUTIVE DAN HARTMAN. HARTMAN IS NOW ON THE BOARD OF DIRECTORS OF SAVAGE BROTHERS, THE FIRM THAT OWNS EMERY MINING.

SIMONELLI SAYS THERE'S NOTHING ILLEGAL ABOUT THIS. BUT HE SAYS UTAH POWER SHOULD NOT BE PAYING FOR IT.

UTAH POWER VICE PRESIDENT DARCEY WHITE SAYS INSURANCE FOR BOTH MANAGEMENT AND LABOR OF EMERY MINING COST RATEPAYERS ABOUT ONE (M) MILLION DOLLARS PER YEAR.

AP-SK-05-23-84 0136MDT

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U N
AP-UPL INVESTIGATION, RICK SHENKMAN, KUTV

(SALT LAKE CITY) -- AN INSURANCE CONTRACT PAID BY UTAH POWER AND LIGHT COMPANY RATE PAYERS IS BEING INVESTIGATED BY THE STATE ATTORNEY GENERAL AND INSURANCE COMMISSIONER.

INSURANCE COMMISSIONER ROBERT DAY SAYS HE ORDERED AN INVESTIGATION INTO THE INSURANCE CONTRACT AWARDED TO EMERY MINING CORPORATION, THE COMPANY THAT MINES UTAH POWER'S COAL.

THE INVESTIGATION WAS ORDERED AFTER K-U-T-V REPORTED DOCUMENTS MAY INDICATE THE CONTRACT WAS AWARDED IN RETURN FOR FINANCIAL FAVORS.

THE CONTRACT WAS AWARDED BY EMERY MINING OFFICIAL DAN HARTMAN TO THE HAWKINS' INSURANCE COMPANIES. THE COMPANIES LATER LOANED HIM 110-THOUSAND DOLLARS ON HIS HOUSE. THE TELEVISION STATION SAYS REAL ESTATE AGENTS ESTIMATE THE HOME IS WORTH ONLY 85-THOUSAND DOLLARS.

HARTMAN WAS LATER PROMOTED TO THE BOARD OF DIRECTORS OF SAVAGE BROTHERS, THE COMPANY THAT OWNS EMERY MINING.

APTV-05-23-84 1812EDT

ITEMS FOR PSC CONSIDERATION

1. Weekly Internal Auditor and Operations Auditor Reports
2. 1984 Audit Proposal.
3. Engineering Audit Proposal. 3.3 million
4. a. Hartman Deal. 250,000 / yr
   b. Letter to Insurance Companies.
   c. Raw Deal to Equitable.
   d. Subsequent memo regarding insurance.
5. Confidential Desbeedove fire report.
6. Empire building (expanded employee numbers from American Coal level)s.
7. Use of Merle Heyward and the double dip.
8. Energy Mutual and third party administrator proposal.
   a. Cannot identify administrative costs.
   b. Payment of questionable medical charges.
9. American Fork public relations function.
   a. Bob Henry - Longwall Deer Creek question.
   b. Budget requests.
   c. Olympic tickets.
   d. Maverick Department as far as EMC is concerned.
10. Payroll audit.
11. Safety violations paid by UP&L with rejuvinated and intensified involvement by Savage Brothers when payment would no longer be a pass-through.
12. Too much capital equipment purchased by UP&L and its resultant run-away costs.
13. U.S. Welding and bottle charges.

14. Failure to comply with safety training and subsequent mine closures.
15. The cost of waste - Keith Sinsel. 275 000
16. Personal non-business use of light trucks. 50 000
17. Double set of figures for CSAP reports.
18. The health plans review and audit process.
19 Inventory thefts.
20. Shredding documents and files.
21. Writing of the Internal Audit Charter.
22. PONER Audit Report.
23. Poor Maintenance.
24. Contaminated Fuel.
25. Short Deliveries.
26. Ash/Rock mined and used as power plant road base. 6[illegible]
27. Use of belt to replace trucks.
28. Purchase of U.S. Steel software package.
29. Hiring of previously injured and medically deficient employees.
30. Eastern recruiting and its failures.
31. Quality of life study.
32. Extensive use of BYU professors, hacks, and nepotistic hiring practices.
33. Total UP&L audit function indifference.
34. Pension design.

35. IDS-Don Byrd issue-requested letter.
36. Lack of trust by senior executives of Dan Hartman.
37. Improper deposit of refund from State detected by UP&L auditors.
38. The Bill DePugh, Don Deboer tactic.
39. Captive Coal Company concepts.
40. Competitive hauling.
    a. Marasco.
    b. Jensen.
41. Other contracted crew usage for personal advantage.
42. Hiring procedures for investment officer.
43. The quote of a person that "no one will retire from EMC".
44. Don Larsen vs. Dr. Ravsten.
45. The Giaque and Williams episode.
    a. The debriefing.
    b. The Vender Suits.
    c. The UP&L EMC-Vendor complicity.
46. Conversations with Neal Savage.
47. Conversations with Bill Zeller.
48. Conversations with Jim Hamlin.
49. Conversations with Jess Lloyd.
50. Conversations with other coal industry personnel.
51. Continued monthly payments for non-existent equipment.
52. Exit interviews of employees.
53. MSHA fines and reports.

54. Determination of coal source alternatives.
55. Determination of coal management alternatives.
56. Premature retirement of excess capital equipment.
57. High Amatortization costs.
58. UP&L and EMC inventory usage coordination and disposal. 3
59. Disposal of scrap, return of parts, system-wide inventory purchase coordination.
60. Computer usage, ownership, leasing agreements, etc.
61. Performance evaluations.
62. The use of consultants.
63. Identification, discussion and review of internal and external audit findings.
64. Executive financial disclosure.
65. The PSC, EMC, UP&L audit agreement.
    a. The discontinuation of the operations auditor.
    b. The diversion of the internal auditor.
    c. The elimination of the audit function.
66. EMC morale.

67. Bonus production levels.

68. Employee code of conduct.

69. The vendor list.

70. The utility rates and regulation study by the League of Women Voters.

71. PSC indifference.

72. UP&L cover-up tactics.

73. The use of the "paper" audit.

74. Mine Plan. Utah Power & Light demand to mine hard section.

75. General account usage.

76. Long wall shields purchase.

77. Records Dukplication and (devisive purpose).

78. TBA Report.

79. Preparation Plant. 20,000,000

80. March 1983 UP&L audit replacement for IA.

81. Bid lockouts.

82. Additional allegations learned.

Mr. SIMONELLI. I can go on through this, but I do not need to waste your time doing it. The report——

Senator HATCH. Why don't you just submit additional documents, and any additional comments that you would care to make, we will keep the record open for you, so that you will have every opportunity to make the case that you say you can make.

Mr. SIMONELLI. And I can rebut one more thing, Senator, please, if you would allow me the opportunity.

Senator HATCH. Sure.

Mr. SIMONELLI. May 24, 1983. The new article was May 1983—excuse me—May 1982. The memo is May 1983—one year. This is from me to William Curtice and Glen Beard, with copies to the executives.

"In order to verify the appropriateness and accuracy of Emery Mining Corporation physical inventory process, an internal audit of the Material Control Department was planned during the quarter. However, as you are aware, the internal audit function is temporarily interrupted by the reassignment of the internal auditor to the Triad project."

"I was and remained the internal auditor, because Emery Mining and UP&L had said that they had hired an internal auditor to the PSC that was investigating its improprieties previous to it." So I was a used being. They said to the PSC, "Yep, we have an internal auditor. He is a former IRS guy. He is doing us a good job." And they curtailed me from doing my work. They literally conned the PSC, the regulatory agency that controls Utah Power & Light.

I can go on for hours.

Senator HATCH. Okay. We will keep the record open if you care to submit any further written comments, but we would like all those documents, and we will make them part of the record.

Thank you, sir.

Mr. SIMONELLI. Thank you, Senator.

[Documents submitted for the record follow:]

EMERY MINING CORPORATION

A SAVAGE BROTHERS COMPANY

May 24, 1983

MEMORANDUM

TO: William H. Curtice
Glen Beard

FROM: James J. Simonelli

SUBJECT: Annual Physical Inventory Procedure

In order to verify the appropriateness and accuracy of the Emery Mining Corporation physical inventory process, an Internal Audit of the Material Control Department was planned during the quarter. However, as you are aware, the Internal Audit function is temporarily interrupted by the reassignment of the Internal Auditor to the Triad Project.

A checklist for the proposed Internal Audit of the Material Control Department and the annual physical inventory was drafted and was being readied for use in conjunction with the proposed audit project. Inasmuch as it will be some time before such an Internal Audit can be undertaken, the drafted checklist is attached hereto to assist you in your preparation for the annual physical inventory.

It is also proposed that you use the checklist as an aid in the usual preliminary meeting conducted in preparation for the physical inventory by the involved departments and personnel. Being prepared with such a checklist may facilitate the interaction necessitated by the involvement of the UP&L auditors during the process.

If I can be of any further service to you or your department in this matter, please call for assistance.

JJS/mj

Enclosure

cc: Ray Christensen
File

J-549.1

P.O. Box 310 • Huntington, Utah 84528 • (801) 687-9821

JAMES J. SIMONELLI
Post Office Box 158
Whiting, New Jersey 08759
Telephone: (201) 350-3243

WORK EXPERIENCE:

1984-Present
1972-1982

United States Treasury Department
Criminal Investigation/Intelligence Division
Special Agent (GS-1811), New York and Utah

—Completed numerous criminal investigations including case and trial preparations involving fraudulent claims, false statements, conspiracy, racketeering, and tax evasion. These involved corporations, executives, narcotics dealers, inmates, multiple filers, and tax protest organizers.

—Most noteworthy recent investigation was the first-ever racketeering prosecution report in the IRS North Atlantic Region.

—Project manager on a number of major programs; acted in supervisory capacity on the Intelligence Staff, Brookhaven Center. Project coordinator of the False Claims Programs; Investigative Agent, Economic Stabilization Program.

—Advisor on promotion and EEO panels, project design, and special internal audit programs. Also initiated/renewed liaison activity with other government agencies and private organizations.

1982-1984

Emery Mining Corporation, Huntington, Utah
Internal Auditor/Project Coordinator

Performed internal audits and procedure reviews; major audits within material control function, production bonus plan, component repair, vendor billing and parts return. Responsible for selection and implementation of the Walker Accounts Payable, Inventory, Purchasing, and General Ledger Software System. Author of corporate code of conduct and detailed Purchasing Department procedures. Established executive level, divisional and departmental monitoring tools. Compiled monthly corporate cost, safety, and capital budget summary report.

1969-1972

Greater Asbury Park Chamber of Commerce, Asbury Park, New Jersey
Secretary of Chamber of Commerce, Public Relations Coordinator

1969-1972

Park Chevrolet, Inc., Asbury Park, New Jersey
Salesman

1968-1970

Pinkerton's Incorporated, Trenton, New Jersey
Director of Personnel and Employment

EDUCATION:

Bachelor of Business Administration — Economics;
Manhattan College, New York, New York; 1968
United States Treasury Special Agent; Washington, D.C., 1972

ACCOMPLISHMENTS:

Enrolled IRS agent for tax preparation; Member Federal Law Enforcement Agents Association; Manhattan District Photographic Specialist; Member Institute of Internal Auditors (1982-1984); Chairman, Federal New York and International Police Olympic Committees (1973-1978); Credit Committee, Manhattan Credit Union, U.S. Treasury Department (1976-1977).

OTHER INFORMATION: Date of Birth: September 8, 1946. Excellent health. Will relocate.

REFERENCES: Personal and professional references will be furnished upon request.

EMERY MINING CORPORATION
A SAVAGE BROTHERS COMPANY

March 27, 1984

To Whom It May Concern:

James J. Simonelli was employed by Emery Mining Corporation from April 1982, until March, 1984, and during this time served as Internal Auditor, Administrative Assistant to the Vice President of Administration and as Administrative Assistant to the Executive Vice President of the company.

Mr. Simonelli's performance in all three of these roles was excellent. His assignments covered a broad spectrum of administrative functions including not only the auditing of warehousing, purchasing, accounting, data processing, personnel, and employee benefits, but also the improvement of these functions. He was also deeply involved with the scheduling and planning functions related to operational improvements.

Mr. Simonelli demonstrated an unusually high level of energy, enthusiasm and innovation in every project and activity to which he was assigned. His dedication and loyalty to the company was exemplary and he showed a willingness to expend great amounts of his personal time to complete assignments in a timely fashion.

Because of his fine work attributes and an ability to learn quickly, I recommend Mr. Simonelli highly for any type of position he may seek.

Sincerely yours,

William L. Zeller
Executive Vice President
& General Manager

WLZ/sg

P O Box 310 • Huntington, Utah 84528 • (801) 687-9821

Internal Revenue Service Department of the Treasury

To Whom It May Concern:

I have known James J. Simonelli since January 1972 when he began as a Special Agent of the Intelligence Division of the Internal Revenue Service. Most recently I have been his Supervisor, since his return to Government Service in July of 1984.

Jim has displayed an excellent job attitude and has put forth a superb and effective effort in all respects. He has been a fine example to the Trainee Agents who have witnessed his work.

Some of Jim's more noteworthy accomplishments since his reinstatement with the Service have been his successful prosecution recommendations of the first-ever Interstate Travel in Aid of Racketeering charges issued in the North Atlantic Region of the Service; his development of liaison relationships with several drug enforcement and rehabilitation agencies as well as his meaningful cooperation with the Department of Justice in the various Arrest and Search Warrants in which he participated.

Jim is a hard working,conscientious and effective employee. He is a teamplayer who contributes his best effort for the success of the whole.

Jim would be a welcome member or leader on any assignment or project, as he would, by example and personal commitment guarantee its success.

Jim's integrity, dependability, insight and courage to accept difficult and challenging assignments make him a unique person. I highly recommend Jim for any position or assignment.

Martin G. Enterlin, Group Manager
Criminal Investigation Division
Manhattan District

EMERY MINING CORPORATION

A SAVAGE BROTHERS COMPANY

March 27, 1984

To Whom It May Concern:

Mr. James J. Simonelli was employed by Emery Mining Corporation from April 1982, until March 1984. His job duties consisted primarily of filling the function of Internal Auditor for the company. During this time Mr. Simonelli assisted me in several areas but only for a brief time.

I have found Mr. Simonelli to be a very loyal and dedicated employee of the company. He always got deeply involved with his work and was very professional in carrying out such work. He has been a very dedicated and very enthusiastic employee, one with which I have enjoyed working.

I would, therefore, recommend Mr. Simonelli for a similar type position either inside or outside the industry.

Sincerely,

James F. Hamlin, Jr.

James F. Hamlin, Jr.
Vice President - Operations

JFH/sg

P O Box 310 • Huntington, Utah 84528 • (801) 687-9821

EMERY MINING CORPORATION

A SAVAGE BROTHERS COMPANY

March 27, 1984

To Whom It May Concern:

James J. Simonelli was hired by Emery Mining Corporation on April 6, 1982, as Administrative Assistant reporting directly to me. His initial assignment was to assist in establishing a Corporate Policy and Procedure Manual for total purchasing activities that had then just been assigned to this location. The company is still using the basic policies and procedures that Jim helped set up.

On May 4, 1982, he was moved to the position of Internal Auditor reporting to the office of the President of Emery Mining Corporation. On November 1, 1982, Jim was re-assigned to the position of Internal Auditor and Administrative Assistant to the Executive Vice President of Emery Mining.

On April 15, 1983, he was assigned as Project Coordinator for implementation of a purchased software package from Walker Interactive Products of an integrated Purchasing, Materials Management and Accounts Payable System. Jim reported directly to me on this assignment and together with the Directors of our Purchasing, Warehousing, Management Information Services and Controller's Departments, made up the project team. This was a major undertaking for Emery Mining Corporation and the project was put on line on February 1, 1984, and has proven to be a better system than I had anticipated. Jim's contributions to its' success was significant.

Jim is a very ambitious individual and approaches each assignment with vigor. He is a very fast and thorough worker and has seemingly total disregard for personal time that he spends on business matters.

Sincerely,

Ray Christensen
Vice President Administration

RC/sg

P.O. Box 310 • Huntington, Utah 84528 • (801) 687-9821

EMERY MINING CORPORATION
A SAVAGE BROTHERS COMPANY

TO WHOM IT MAY CONCERN:

James J. Simonelli has been known to me since April of 1982 when he was hired by the Executive Group at Emery Mining.

He has audited the various functions of the Material Control Department of which I am Director. I have found him to be helpful, thorough and fair in his audits.

He also served as Project Coordinator for the implementation of the Walker Interactive Financial Software System, a major project in which I also participated. I found Jim to be an effective leader and organizer who continually encouraged and obtained the highest level of performance from the project participants. He exhibited a contagious level of hardwork and achievement which significantly contributed to a record implementation schedule of the software system.

He is a forthright, fair and friendly man who in addition to his career takes time to contribute to several worthwhile community activities.

I can recommend Jim for future employment without reservations. He has been an asset to this company and to my department. I am confident that his high standards of personal performance will benefit any firm he chooses to work for.

Sincerely,

W. H. Curtice, Jr.
Director Material Control

P.O. Box 310 • Huntington, Utah 84528 • (801) 687-9821

Internal Revenue Service
memorandum

date: 14 FEB 1985

to: Chief, Criminal Investigation Division CI

from: Group Manager CI:A-11

subject: Performance of Special Agent James Simonelli

On July 23, 1984, Special Agent James Simonelli reported for duty with the Manhattan District. Since that reporting date, I have been Jim's group manager. During this time period, I have closely observed Jim's work performance and can say only good things about it. Jim has displayed an excellent job attitude and has put forth a superb effort. He has enthusiastically done whatever has been asked of him and much more. He has continuously given strong vocal support to Manhattan CID, both within our organization and outside of it.

Some of Jim's more noteworthy accomplishments since his arrival include working on and submitting a prosecution report on eight subjects, three of whom were recommended on ITAR charges. This was the first-ever prosecution report in the North Atlantic Region on ITAR (Interstate Travel in Aid of Racketeering). Also, Jim has worked through the night on two separate occasions, one time on a surveillance and the other on a search warrant. He has also taken the initiative to start or renew liaison activity with various government and private organizations.

A chronological listing of some of Jim's accomplishments to date are as follows:

October, 1984 - 1) Participated in CID Financial Search Warrants.

2) Conducted a surveillance on the [redacted], a major organized crime figure.

3) Participated in the arrest of [redacted], another major organized crime figure.

November, 1984 1) Established liaison with NYPD - Intelligence Unit at Hudson Street, NYC.

December, 1984 1) Re-established liaison with U.S. Coast Guard.

2) Assisted DEA in search warrants and worked through the night doing so.

3) Worked through the night again on a CID surveillance on the Lower East Side and Harlem.

January, 1985 - 1) Submitted prosecution report on eight subjects, three on ITAR charges.

2) Established liaison with NNBIS, The Vice-President's National Narcotics Border Interdiction System.

3) Established liaison with AREBA (Accelerated Reeducation of Emotions, Behavior and Attitudes), a private organization that deals with business executives who are trying to rehabilitate themselves from drug problems.

February, 1985 - 1) Currently working on two separate Grand Jury investigations with the potential for making more ITAR cases.

In summary, I am very satisfied with Jim's work performance, and think that he has already made a significant contribution to CID, especially in the narcotics area. I would expect him to continue in such fashion.

Martin G. Enterlin

Special Agent James Simonelli
Recommedation for Sustained Superior Performance Award

In all aspects of his job, Special Agent James Simonelli exceeds what is required of him in the daily performance of his duties.

He has been a Special Agent for almost five years and has been a valuable member of the Manhattan District throughout the period I have known him. His exceptional dedication to his job is unequaled. His tenacity in overcoming work problems and attempts to uncover and discover areas of fraud have met with a high degree of success. Some example of his recent outstanding work are as follows:

1. He was assigned a Narco case which resulted in a prosecution recommendation where the additional criminal income for two years exceeded $33,000.00. Simonelli overcame many problems which were inherent to the investigation. Among these problems were use of nominees used to purchase property; use of close relations of the taxpayer as nominee; use of nominees to borrow funds thru a small financial institution in a locality remote from the taxpayer's residence and area of operation; hostility by nominees used by the taxpayer and obtaining evidence of a large legal fee paid by the taxpayer whereby the attorney receiving the fee initially claimed privilege and was uncooperative.

2. Through astute methods of investigation, Simonelli was able to discover a sophisticated and intricate scheme wherein the taxpayer used two unrelated accountants in an attempt to evade $25,000 of his income in one year. The taxpayer made subsequent "cover up" attempts to hide the scheme from the I.R.S. by submitting two false returns for the same year. Prosecution was recommended.

3. Simonelli was assigned to assist on a project in North Carolina which resulted in a commendation letter from the Chief, Intelligence Division, Greensboro, N.C., praising him for his superior contribution to the project which resulted in a multitude of cases throughout the country.

4. Simonelli was assigned an investigation of an unknown multiple filer (false claims for refunds) involving 17 different names being used on returns. Within 30 days after assignment, through Simonell's exhaustive efforts, the perpetrator was identified, arrested and arraigned. Simonelli's investigative efforts included sifting through garbage and trash cans outside various premises listed on returns bearing 17 different names. Subsequent information was developed by Simonelli that the taxpayer was involved in a conspiracy with at least six other conspirators. Simonelli also recommended prosecution of the conspirators. Four of the seven defendants are currently awaiting sentencing. The conspirators also illegally obtained Social Security and Welfare checks. The issuing agencies were alerted to the scheme.

   It is noted that during the investigation and ensuing trial some of those involved threatened Simonelli's life.

Further investigation by Simonelli indicated that similar conspiracies exist and that there is widespread activity involving use of false returns to obtain illegal tax refunds.

Based on information developed by Simonelli, projects have been initiated in at least three Districts, resulting in ten or more investigations in progess for false claims for refunds by filing false returns.

Simonelli cultivated a friendly and cooperative liaison with officials of other agencies all of whom are cooperating in these false refund projects.

Simonelli's excellent work on the false refund case (conspiracy) has prompted the Regional office to consider a Regional project on those engaged in similar conspiracies. Regional officials have discussed making a National project in this area of fraud which appears to have tremendous potential.

Through Simonelli's efforts, Brookhaven Service Center officials are on the alert for similar false claims for refunds and are considering procedures to be undertaken to uncover similar schemes as that discovered by Simonelli.

It is apparent that Simonelli's sustained superior performance will continue upon his eagerly awaited return to duty and I therefore recommend that he be given a Sustained Superior Performance Award.

Department of the Treasury

District Director
Internal Revenue Service

Date: NOV 23 1976 | In reply refer to:

Mr. James J. Simonelli
Intelligence Division
Manhattan District
New York, New York

Dear Mr. Simonelli:

It gives me great pleasure to present to you this Special Achievement Award of $681.00, in recognition of the excellent manner in which you performed your duties as Special Agent during the period from January 1, 1975 through July 31, 1976.

You have displayed a spirit of cooperation, dependability and devotion to duty of which you may well be proud. These attributes played a very important part in the successful operation of your office.

The degree of success of any organization is dependent largely upon the interest, loyalty, competence and devotion to duty of all its employees. You represent the high caliber of employee of whom the Federal Service can justly be proud.

Please accept my personal congratulations for this superior accomplishment. It is my sincere hope that this official recognition of your exceptional performance will serve not only as a token of my appreciation but also as an added incentive to all other employees in the Manhattan District.

A copy of this letter will be placed in your official personnel folder.

Very truly yours,

William J. DePugh
Chief, Intelligence Division

Latter hired by UP+L
To investigate J.J. Simonelli

Dept. of the Treasury
Form No. 4009
(Rev. 1-73)

RECOMMENDATION FOR PERFORMANCE RECOGNITION

1. Type of Recommendation *(Check)*

Special Achievement
☒ Sustained Superior Performance
☐ Special Act or Service

Other Recognition
☐ Outstanding Performance Rating
☐ Quality Pay Increase
☐ (Specify) ______________________

Recommendation for *(Check one)* ☐ Group ☒ Individual

Covers period From 1/1/75 To 7/31/76

BUREAU	ORGANIZATIONAL UNIT
Internal Revenue Service	Intelligence Division, Branch B

OFFICE ADDRESS (STREET, CITY, STATE, ZIP CODE)
Manhattan District

NAME AND TITLE OF EMPLOYEES	SOC. SEC. NO.	GRADE	SAVINGS	AWARD
James J. Simonelli, Special Agent	062-38-1370	12	$	$ 646

(If more space is needed, continue on separate sheet)

2. Justification of Recommendation

a. Summarize Job Requirements and Standards

RECEIVED
PERSONNEL BRANCH
MANHATTAN DISTRICT IRS
SEP 20 3 08 PM [illegible]

b. Describe How Performance Exceeds Requirements

See Attached

(Continue on Reverse)

2.b. Performance *(Continued)*

(If more space is needed, continue on separate sheet)

DATE	SIGNATURE AND TITLE OF INITIATING OFFICIAL
SEP 1 1976	Group Manager

3. REVIEWS – If there is disagreement with the recommendation, attach separate statements explaining in full. Indicate agreement by endorsement.

SIGNATURE AND TITLE OF REVIEWING OFFICERS	RECOMMENDATION (ENTER DATE)		AWARD RECOMMENDED
	APPROVE	DISAPPROVE	
Chief Branch B	9-1-76		$ 646
W. T.	9/16/76		646

SIGNATURE AND TITLE OF APPROVING OFFICIAL	DATE	ACTION	AMT. OF AWARD
Chief I.D.	9/20/76	☒ APPROVE ☐ DISAPPROVE	$ 646.–

4. AUTHORIZATION OF PAYMENT OF AWARD – A cash award is approved under the regulations of the Incentive Awards Program. This is not an authority to exceed an appropriation, allotment, suballotment, apportionment or reapportionment. Check delivery instructions are below.

AMT. OF AWARD	DATE	SIGNATURE AND TITLE
$ 646.–	9/20/76	Chief Intelligence

DELIVER CHECK TO

5. FISCAL OFFICE – Funds are available and obligated to pay this award.

OFFICE	ACTIVITY	APPROPRIATION TO BE CHARGED

DATE	SIGNATURE AND TITLE

6. PAYROLL OFFICE

SCHEDULE NUMBER	DATE OF SCHEDULE	PAY PERIOD

EMERY MINING CORPORATION
31 NORTH MAIN STREET
P. O. BOX 310
HUNTINGTON, UTAH 84528

Application For Employment

Date of Applications February 1, 1980

Position(s) Applied For Industrial Relations / Employee Relations / Security Systems

Referral Source ☐ Advertisement ☒ Friend ☐ Relative

☐ Employment Agency Other

Name Simonelli (Last) James (First) J. (Middle) Social Security No. 062-38-1370

Address PostOffice Box 277 (Street) Wellington (City) UTAH (State) 84542 (Zip)

Phone (80)-637-6519 Are you known to schools/reference by another name ☐ Yes ☒ No

If yes, by what name?

Date of Birth September 8, 1946

Have you filed an application or been employed here before? ☐ Yes ☒ No Date(s)

Are you a Citizen of the United States? ☒ Yes ☐ No

If not, do you possess an Alien Registration Card? ☐ Yes ☐ No

Are you available to work? ☒ Full Time ☐ Part Time ☐ On Shifts

Do any of Your Friends or Relatives Work Here? ☒ Yes ☐ No

If Yes, List Name(s) Jerry Ericson and Max Lopan

Have you been convicted of a felony or released from prison within the last 7 years? ☐ Yes ☒ No

If yes, describe in full, including date(s)

Are you Married? Yes If so, Spouse's Name Pamela Simonelli

Give names and ages of each of your children.

Name	Date of Birth	Name	Date of Birth
Victor Jon	Sept. 8 1968		
Frances Patrice	Feb. 27, 1971		

Give names and addresses of EVERYONE (other than wife or children) dependent upon you for support

COMMITTEE OF CONSUMER SERVICES

COMMITTEE MEMBERS

FELSHAW KING
Chairman

HAROLD DANGERFIELD
JOYCE DAVIS
DORAN FOX
LELAND HOGAN
GUIDO RACHIELE

JOSEPH L. INGLES Ph. D
Administrative Secretary

STATE OF UTAH
410 HEBER M. WELLS BUILDING
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84110
530-6645

SCOTT M. MATHESON
Governor

August 2, 1984

Gus Pangis, Assistant Chief
Criminal Investigation Division
Internal Revenue Service
120 Church Street 21st Floor
New York, NY 10008

Attention Gus Pangis, Assistant Chief
Criminal Investigation Division

Dear Mr. Pangis:

I am writing on behalf of the Utah Committee of Consumer Services which is a state agency responsible for representing the interests of residential, small business and agricultural consumers of natural gas, electric and telephone utilities before the Utah Public Service Commission. On January 9, 1984, Utah Power & Light filed a $92,000,000 rate increase application with the Public Service Commission, the second largest rate increase requested in the history of the state. One of Utah Power & Light's most significant costs for the generation of electricity are those for the mining and transportation of coal. The bulk of Utah Power & Light's coal is mined and transported by Savage Brothers Corporation through their affiliated corporations of Emery Mining Company and Western Coal Carriers. It is our understanding that Jim Simonelli, a new employee of yours worked for Emery Mining Corporation as an internal auditor from April 1982 to April 1984 reviewing procedures and making recommendations for cost-cutting, for improving efficiency and effectiveness of Emery mining whose costs are passed onto Utah Power & Light and in turn to the rate payers of the company. To our knowledge, Mr. Simonelli's recommendations for cost cutting and for improving the efficiency and effectiveness of the coal operations of Utah Power & Light have never been presented to the Public Service Commission.

Earlier in the 1984 Utah Power & Light case, the Committee of Consumer Services filed a petition requesting that Utah Power & Light be ordered to undergo a management efficiency study, and it is our understanding that Mr. Simonelli's findings and recommendations could assist the Public Service Commission and at the same time support our petition for a management efficiency study. We are writing requesting that Mr. Simonelli be allowed to testify before the Utah Public Service Commission here in Salt Lake City in the Utah Power & Light rate case 84-035-01 hearings August 10, 1984. Testimony would be limited to his experience as an employee of Emery Mining and as a non-government employee. No tax related information would be discussed and no information from Mr. Simonelli's previous and/or current employment as a special agent of the Criminal Investigation Division will be requested. We are requesting that the proper Federal government clearances be granted enabling Mr. Simonelli to testify before the Utah Public Service Commission in the Utah Power & Light rate case. We would appreciate your expediting our request to get the proper approval and clearances for him to testify in this case August 10, 1984.

If you have any questions or concerns, feel free to call. Thank you for your consideration.

Sincerely yours,

Joseph L. Ingles, Ph.D.
Administrative Secretary

JLI:ds

THE ATTORNEY GENERAL
STATE OF UTAH
DAVID L. WILKINSON
ATTORNEY GENERAL

PAUL M. TINKER
DEPUTY ATTORNEY GENERAL
DALLIN W. JENSEN
Solicitor General
FRANKLYN B. MATHESON
Senior Assistant Attorney General

WILLIAM T. EVANS, Chief
Human Resources Division
DONALD S. COLEMAN, Chief
Physical Resources Division
STEPHEN G. SCHWENDIMAN, Chief
Tax & Business Regulation Division
EARL F. DORIUS, Chief
Governmental Affairs Division
PAUL M. WARNER, Chief
Litigation Division

October 31, 1984

Mr. Walter Margolies
Chief, Criminal Investigation Division
P.O. Box 558
Church St. Station
New York, New York 10008

Re: Mr. James J. Simonelli

Dear Mr. Margolies:

Assistant Utah Attorney General Suzanne M. Dallimore has asked that I write and relate to you some of the circumstances surrounding the number of contacts you have recently received about your employee, Mr. James J. Simonelli.

As you know, Mr. Simonelli was formerly employed as an internal auditor with Emery Mining Corporation, here in Utah. Our office is engaged in adverse actions with this company, and the public utility that contracts with it, Utah Power & Light. These actions are in proceedings before our state's utility regulatory body, the Utah Public Service Commission. Mr. Simonelli has testified before that body, and in depositions taken at the behest of Utah Power & Light, Emery Mining Corp, and other interested parties. His testimony has revealed details of events occurring at Emery Mining Corp., and at Utah Power & Light, that we believe should be reviewed in great detail.

Mr. Simonelli did not have direct knowledge of many of the events he testified to, but in his deposition he provided the names and details of conversations with the persons having such

236 STATE CAPITOL • SALT LAKE CITY, UTAH 84116 • TELEPHONE 801-533-4446

direct knowledge. He also provided documents which appear to corroborate what he had learned while at Emery Mining.

On about September 4, 1984, our office moved to protect Mr. Simonelli from being required to testify further until other, corroborative sources had been exhausted. The Public Service Commission so ordered some days later.

Since Mr. Simonelli testified, he has been personally sued for slander, and this office has become aware of attempts here in Utah to cast doubt on his integrity. We have also been advised that your office has received mysterious calls and allegations which appear to be an effort to create controversy around Mr. Simonelli.

When Ms. Dallimore learned that Mr. Simonelli had been subpoenaed again this week, she quickly moved to quash the subpoena. This appears to be another attempt to harass and injure this witness. I enclose copies of this motion, and the earlier motions for protective orders.

Mr. Simonelli's testimony is only a small part of the facts properly before our Public Service Commission. Ms. Dallimore and others in this office are now gathering evidence to provide additional corroboration for his statements. The direct sources of his facts, those within Emery Mining Corp., have not yet been deposed because Emery Mining Corp. has objected to discovery. Mr. Simonelli's testimony is believable and substantial and appears to be provable through sources other than him.

You have experienced, no doubt, personal attacks on your agents when the going got rough. We would suggest this to be the case here. Mr. Simonelli did what he felt was his public duty, and now is being victimized by an effort to divert attention, from the issues to attacks on him. This is most unfortunate.

We would ask you to consider the information you are recieving about Mr. Simonelli in this context, and hope that what appears to be an effort to cost him his job will be viewed sympathetically by you. Though we are not personal guarentors of Mr. Simonelli, we believe that what is taking place is questionable, highly inappropriate and should be scrutinized very carefully before any weight is given to it at all.

Though I am not directly involved in the legal activities in regard to Mr. Simonelli, the efforts are coordinated in my Division and I am briefed often on that which is taking place. What I have presented to you in this letter is given in hopes that you can understand the highly sensitive and complex nature of this entire proceeding. Thank you for your interest and cooperation in this matter.

Very truly yours,

Stephen G. Schwendiman
Assistant Attorney General
Division Chief
Tax & Business Regulation
Division

cc: Suzanne M. Dallimore

UTAH STATE SENATE

SENATOR
WILLIAM T. BARTON

TWELFTH DISTRICT
SALT LAKE COUNTY

3940 WEST 4100 SOUTH
WEST VALLEY CITY, UTAH 84120
OFFICE: 969-5102
OR 968-2121
HOME: 968-6964

APPROPRIATIONS
Natural Resources and Energy, Chairman
STANDING COMMITTEES
Education, Chairman
Revenue and Taxation

January 30, 1985

Brent Cameron, Chairman
Utah Public Service Commission
4th Floor, Heber Wells Building
160 East 300 South
Salt Lake City, Utah 84111

Dear Mr. Chairman:

We are writing to request your reconsideration of the Utah Public Service Commission's decision to dismiss the James J. Simonelli case.

(We are greatly disturbed by the possibility that the allegations made by Mr. Simonelli will not receive a full hearing.) The controversy raised by dismissal of the case serves only to weaken public confidence in the Public Service Commission and the rulings it makes.

Given the strong proposition taken by the Utah Attorney General's office on the need for a full hearing before the commission, we feel we must express our support for such a hearing.

Until the Simonelli charges are fully investigated, and then aired before the Public Service Commission, the Commission will be clouded by public mistrust.) It is time to clear away the clouds and restore faith in Utah's public utility regulatory process.

We urge you to reconsider and afford Mr. Simonelli's allegations a full public review before the Public Service Commission, or as an alternative, order an independant full investigation removed from the Division.

Sincerely,

Brent C. Over
Dale E. Stratford

Karl G. Swan
William Barton

8-14-84

Agent says UP&L clout feared

SALT LAKE CITY (AP) — An Internal Revenue Service agent who claims to have evidence of wrongdoing by Utah Power & Light Co. has told the Public Service Commission UP&L's political clout was feared by state investigators.

James J. Simmonelli, an IRS employee who once worked as an auditor at Emery Mining Co., which operates UP&L's coal mines, testified Monday an investigator with the state attorney general's office told him the giant utility might use its political might to quash a probe.

Simmonelli, who is testifying as a public witness against UP&L's bid for a $92 million rate hike, said earlier that Emery Mining had squandered millions of UP&L ratepayer dollars by overpaying for services and engaging in alleged "crooked" business deals.

He said Monday that state investigator Wayne Wickizer complained to him last May that, "it was a good possibility that the power company would use all of its political influence to kill the case at the attorney general's level."

Simmonelli said he then took his evidence concerning Emery Mining to the Utah Committee of Consumer Services, which has sponsored his testimony.

Emery Mining is a subsidiary of Savage Western Industries, a parent company of several firms which have business links to UP&L and its coal operations.

Under cross-examination by UP&L attorney Thomas Forsgren, Simmonelli acknowledged he had sought employment with the consumer services committee when he first approached the panel with his evidence.

As an investigative auditor for the panel, he could have made $4,000 a month in fees. However, Simmonelli said he later withdrew that proposal and decided to go public with his allegations.

Simmonelli has yet to detail those claims of wrongdoing, except to say Emery Mining continued to pay for equipment lost or inoperable; used ratepayers' money to grant special benefits to high-level employees, and allegedly purchased equipment from related companies at inflated prices.

He said he became familiar with most of the alleged acts while employed by Emery Mining between April, 1982, and January of this year.

Simmonelli also said during that time he had purposely hindered state investigators looking into Emery Mining operations — an admission that resulted in the hearings being recessed to allow Simmonelli to consult an attorney.

6 G DESERET NEWS, WED. P.M./THURS. A.M., SEPTEMBER 12-13, 1984

PSC urged to dissect Emery Mining

By John Ward
Deseret News staff writer

Utah's utility consumer advocate has asked the Public Service Commission to go beyond facts and figures in considering allegations made by James Simonelli, a former auditor of Emery Mining Corp.

The Committee of Consumer Services wants commissioners to consider basic business practices of Emery Mining, then alter the contract that ties it to Utah Power & Light Co.

At first glance, that suggestion seems innocuous. But it calls for a departure from the PSC's traditional method of handling controversial cases. And it indicates the consumer committee may be destined for a philosophical collision with commissioners.

Simonelli appeared before the PSC in August and testified on public witness day of a UP&L rate hearing. He made sweeping allegations of wrongdoing at Emery Mining. He accused state regulators and UP&L officials of refusing to investigate the allegations.

Emery Mining is the contractor that operates UP&L's central Utah coal mines. The cost of any waste or wrongdoing at the mines is being passed on to UP&L's ratepayers, Simonelli asserted.

UP&L and Emery Mining bristled at the attack, saying Simonelli's allegations were based on rumors and his appearance before the PSC was calculated to be a media ambush. Emery Mining said it wasn't even certain what allegations were being made and, with the PSC's approval, asked for a more definitive statement of what Simonelli was saying.

That statement was filed Tuesday by the Committee of Consumer Services, the agency that sponsored Simonelli's original testimony. The 27-page document contains the first look at all of Simonelli's allegations.

Most notable is that the allegations have been distilled. Simonelli originally presented a list of 82 brief allegations. "The so-called '82 allegations' overlap and duplicate in many respects," the committee wrote in its Tuesday statement. "The areas of concern he identified really involve about 22 principal points."

The statement lists the 22 points and provides some discussion of each. Simonelli's allegations include:

—There are too many people in management positions at Emery Mining. Competitors could mine the coal for half of the overhead costs.

—Waste is excessive at Emery Mining, further contributing to high overhead costs.

—Emery Mining hires outside consultants to handle affairs its own company should direct.

—Emery Mining keeps insurance policies on employees who have been terminated and sponsors a salary continuation plan that is administered by people related to Emery Mining officers.

—An Emery Mining officer awarded an insurance contract, then received financial benefit from the agent handling the contract.

—Emery Mining does not audit areas of the business sensitive to losses.

—Emery Mining abuses, misplaces and fails to maintain expensive equipment and supplies.

—Emery Mining spent $250,000 for a public relations office of no value to UP&L.

—Contracts between Emery Mining and other companies are fraught with kickbacks. Emery Mining, owned by Savage Brothers Inc., also awards contracts to other Savage Brothers companies without proper bidding.

—Fines for Emery Mining safety violations are passed on to UP&L.

—Emery Mining purchases too much equipment for inventory and fails to maintain it.

—Emery Mining produces coal with excessive ash and rock content that damages UP&L power plant equipment.

But Tuesday's document does not contain some details Simonelli's critics would like to see. And it does not precisely conform to the course public service commissioners would like to follow.

In the midst of the legal fray that followed Simonelli's original testimony, PSC Chairman Brent H. Cameron said the commission intended to handle the allegations strictly from a ratemaking point of view.

Cameron said the commission wants an itemized list of the allegations and a dollar estimate of how ratepayers are affected. Then, if the commission found the allegations true, UP&L would not be allowed to pass those costs on to ratepayers. Allegations of a criminal nature or otherwise would be referred to other agencies.

Tuesday's statement by the committee disagrees with that philosophy, saying it does not get to the root of the problem. The committee said that approach is the same as picking the brown leaves off a dying plant while problems in the soil go unnoticed and the plant continues to die.

The committee said Emery Mining mismanagement and inefficiencies are only symptoms of an ongoing problem caused by UP&L's contract with the company — a contract that allows for abuses.

Emery Mining ties to UP&L are governed by a "cost plus" contract, the committee said. Emery Mining is reimbursed for mining UP&L's coal. Then UP&L pays the company a management fee that substitutes for profits.

"What incentive does Emery Mining have to reduce its costs?" the committee wrote. "Emery Mining makes the same amount of money regardless of how much it costs UP&L to buy the coal. In fact, because Savage Brothers companies do business as contractors with Emery Mining, increases in operating costs bring in additional revenue to these companies and, therefore, to the owners of Emery Mining."

The committee suggests opening the coal contractor job to competitive bids and having those bids based on a cost per ton of coal basis rather than a cost plus basis. Then inefficiencies presumably would come out of the contractor's profits.

"The problem is not that UP&L owns its own coal mines, it is that UP&L has entered into agreements to mine the coal that do not include the proper market incentives," the committee wrote.

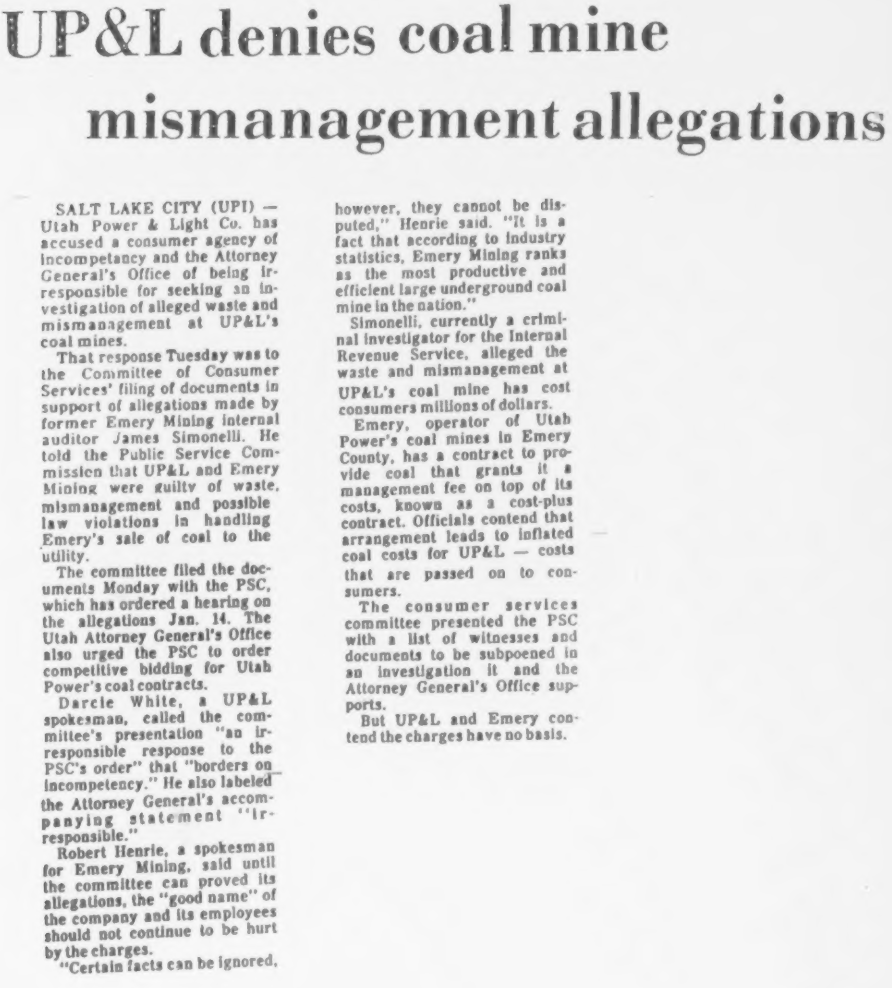
Public service commissioners should look at basic economics and business principles and make a value judgment in this case, the committee said. "For too long, the utility regulation in Utah has been dominated by economic testimony that has concentrated on applying models, studies and theories to utility regulation."

In making that point, the committee failed to satisfy the PSC's wishes for specific cost information.

Tuesday's statement said each of Simonelli's allegations marks a cost to ratepayers. It didn't say how much. In many cases, the statement said, Emery Mining charges are out of line with charges of other coal miners. But no specific comparisons were offered.

Further statements and hearings may produce more specifics. Later this fall, the committee is to file a detailed case based on Simonelli's allegations. Then other organizations will have a chance to respond and final hearings will be held in January.

LOGAN HERALD JOURNAL - Wednesday, October 3, 1984



UP&L denies coal mine mismanagement allegations

SALT LAKE CITY (UPI) — Utah Power & Light Co. has accused a consumer agency of incompetancy and the Attorney General's Office of being irresponsible for seeking an investigation of alleged waste and mismanagement at UP&L's coal mines.

That response Tuesday was to the Committee of Consumer Services' filing of documents in support of allegations made by former Emery Mining internal auditor James Simonelli. He told the Public Service Commission that UP&L and Emery Mining were guilty of waste, mismanagement and possible law violations in handling Emery's sale of coal to the utility.

The committee filed the documents Monday with the PSC, which has ordered a hearing on the allegations Jan. 14. The Utah Attorney General's Office also urged the PSC to order competitive bidding for Utah Power's coal contracts.

Darcie White, a UP&L spokesman, called the committee's presentation "an irresponsible response to the PSC's order" that "borders on incompetency." He also labeled the Attorney General's accompanying statement "irresponsible."

Robert Henrie, a spokesman for Emery Mining, said until the committee can proved its allegations, the "good name" of the company and its employees should not continue to be hurt by the charges.

"Certain facts can be ignored, however, they cannot be disputed," Henrie said. "It is a fact that according to industry statistics, Emery Mining ranks as the most productive and efficient large underground coal mine in the nation."

Simonelli, currently a criminal investigator for the Internal Revenue Service, alleged the waste and mismanagement at UP&L's coal mine has cost consumers millions of dollars.

Emery, operator of Utah Power's coal mines in Emery County, has a contract to provide coal that grants it a management fee on top of its costs, known as a cost-plus contract. Officials contend that arrangement leads to inflated coal costs for UP&L — costs that are passed on to consumers.

The consumer services committee presented the PSC with a list of witnesses and documents to be subpoened in an investigation it and the Attorney General's Office supports.

But UP&L and Emery contend the charges have no basis.

Salt Lake Tribune
Business
Thursday April 7, 1983
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Coal Mine Operations Efficient, UP&L Executive Avers to PSC

By Con Psarras
Tribune Staff Writer

Utah Power & Light Co.'s coal mines are operating efficiently and at an overall savings to utility ratepayers, a UP&L executive testified Wednesday before the Public Service Commission.

Dean L. Bryner, senior UP&L vice president, defended the management and operation of the utility's five Emery County coal mines during the third day of PSC hearings on the cost-effectiveness of the mines.

A 1981 study commissioned by the Utah Committee of Consumer Services criticized UP&L's decision in 1977 to begin mining its own coal for its power plants instead of relying on long-term, free-market coal contracts. The study alleged that cheaper, free-market coal was available to UP&L power stations.

Disputes Contention

But Mr. Bryner disputed that contention and told the PSC that each coal mine UP&L has purchased was bought after private coal suppliers told the utility they could not continue sales at contract prices. "They told us they weren't making any money and they couldn't continue with the contracts," Mr. Bryner said.

He said studies show that out of 14 existing Utah coal mining companies, Emery Mining Co., which manages the UP&L mines, ranks third in overall productivity. The most expensive coal mined by UP&L has come from the company's Wilberg Mines, but the cost of that coal has sharply dropped in the last year, Mr. Bryner said.

While Wilberg coal was being produced at an average cost of $59 a ton last April, the mine is currently producing coal at a cost of about $34 a ton, he said. That cost compares favorably with all other underground coal operations in the state.

New Mining Equipment

The reduction in cost has been realized through the addition of new mining equipment and the discovery of a more easily mined coal deposit in the mine, Mr. Bryner explained.

Mr. Bryner was one of several UP&L witnesses to testify before the commission, which is seeking answers to questions raised about the operation of the coal properties and their benefit to ratepayers.

Additional Regulation

The Utah Division of Public Utilities has proposed in the hearings that UP&L be required to report to the PSC on a continuing basis the cost of its coal production, and to submit to additional regulatory scrutiny over the entire coal operations. Mr. Bryner said the company would go along with any order by the PSC calling for additional regulation.

He complained about media reports of allegations dealing with inefficiency and misconduct at the mines, and he said criticism of the company's purchase of engraved shotguns for several Emery Mining Co. employees is not justified.

The shotguns were given to members of the company's mine safety team which won a first place award in mine rescue and first aid techniques during competition last year in Lexington, Ky. On their way back to Utah after the competition, the team heard of a mining disaster in Colorado and rushed to the disaster scene to help rescue "their fellows miners." The shotguns, Mr. Bryner said, were gifts given in recognition of their "heroism."

Probe of Utah P&L Reopened on Charges Of Mismanagement

By a WALL STREET JOURNAL *Staff Reporter*

SALT LAKE CITY—The Utah Public Service Commission reopened an investigation into Utah Power & Light Co. operations to examine charges that mismanagement of mining activities is costing utility rate payers more than $1 million a year.

The charges were made before the commission by James J. Simonelli, a former internal auditor for Emery Mining Co., a closely held concern that manages Utah Power's coal mines under contracts valued at about $10 million.

Mr. Simonelli, who now is an investigator in New York City for the Internal Revenue Service, accused Emery Mining of 82 separate areas of wrongdoing in mine management. He said the company has inflated mining costs by neglecting to undertake competitive bidding for mine-related services and by offering expensive personal benefits to company executives.

Mr. Simonelli's testimony was brought by the Utah Committee of Consumer Services, a state agency responsible for representing residential utility customers in regulatory proceedings. Mr. Simonelli testified during hearings on Utah Power's request for a $92 million annual rate increase to recover costs of building new electrical generating facilities.

Emery Mining and Utah Power have denied the mismanagement charges. The mining contractor filed suit in state court here on Tuesday, charging Mr. Simonelli and the consumer committee with slander and defamation aimed at attempting to persuade regulators to strip Emery Mining of its Utah Power contract. No court date has been set.

The Public Service Commission said it would investigate the mismanagement charges by reopening a two-year-old examination of the operations of Utah Power's five southern Utah coal mines. That case, in which a final order has yet to be delivered, was prompted by claims by the consumer committee that Utah Power's privately mined coal has contributed to huge rate increases as a result of mismanagement.

The commission said it would also refer Mr. Simonelli's charges to the Utah attorney general for potential criminal investigation. Mr. Simonelli testified that he previously delivered evidence of alleged mismanagement to the attorney general. Mr. Simonelli said the attorney general is conducting an independent investigation. The attorney general has declined comment on reports of such an investigation.

Emery Mining is a unit of Savage Western Industries, a holding company for 23 closely held energy and transportation concerns.

UPDATE

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John T. Nielsen - Commissioner

Volume 6 Spring 1987 Issue 1

Fire Marshal digs out the facts

WHAT HAPPENED AT WILBERG?

Arson Investigator Brent Halladay, Utah State Fire Marshal's Office. In spite of the recent lawsuit settlement by the families of the Wilberg victims, Halladay plans to spend a lot of time in a witness chair.

Brent Halladay squirms in his chair when asked, "Who was at fault at the Wilberg Mine disaster?" That's up to the courts, he says. But after months of investigation, he knows how the fire got started.

With millions of dollars in lawsuits pending, there is no shortage of accusatory fingers being pointed as a result of the Wilberg fire. The Utah State Fire Marshal's Office will play a key role in determining who gets what share of the blame.

Brent Halladay and Lynn Borg, both arson investigators for the Fire Marshal's Office, were the "fire experts" during the Wilberg probe. They were the guys who were crawling around in the ashes digging for missing clues such as a "compressor pop-off valve." They are the guys who have yet to spend a part of their lives getting grilled in witness chairs until the juries have their say.

"We're going to be old men before this is over," said Halladay. He may be right. It's already been two years and the plaintiffs aren't even through filing lawsuits, much less settling anything in court.

On Dec. 19, 1984, fire broke out in the Wilberg Mine's Number 4 Entry. Further into the mine, in the 5th Right section, there were 28 miners and company executives working to set the world's record for production with a longwall mining machine.

The longwall is an advanced piece of mining equipment that shears off coal at a rate unequaled by anything else in the business.

By the time the 5th Right crew gave up their record attempt and tried to make their escape, it was too late. Only one miner got out alive.

The day of the disaster started out like any other uneventful Wednesday. But then coal production in 5th Right soared throughout the first and second shifts. By the time the third (afternoon) shift began, officials had decided to go for a world's record. They scheduled overtime and brought in support personnel.

Half of the crew that night operated the longwall machine. The other half was made up of Emery Mining

SEE INSIDE

- WILL THE 'REAL' CRIME SOLVERS PLEASE STAND
- DRUNK DRIVERS FACE NEW ASSAULT
- ETHICS AND THE POLICE PROFESSIONAL

Corporation executives, there to encourage the crew, and of laborers brought in from other parts of the mine to do back-up work.

First Notification of Fire

Everything was running according to expectations until the crew was notified around 9 p.m. that a fire had been observed near the mouth of 5th Right. That would put it about 2 miles down from the entrance to the mine.

Sometime thereafter the mining company executives led a group down the conveyor belt tunnel to check the fire. The others remained with the longwall. By the time the executives reached the door to Crosscut 34, the very worst of emergencies had evolved. The mine was fully involved with fire. And the escape routes were blocked.

Rescue crews, at risk for their own lives, went in a few days later and found the dead miners. They were not able to get the bodies out until nearly a year later. Reclaiming the mine and the ensuing fire investigation took another year.

Air Compressor Starts Fire

The culprit was a faulty air compressor, positioned between the main exit and both the primary and secondary escape routes.

There were indications that it had been running constantly, unattended, for at least three days. A special switch, designed to shut the compressor down in case it should overheat, had been bypassed.

The Fire Marshal's Office entered the investigation at the request of Emery County Sheriff Lamar Guymon.

Halladay later found out what the old miner had not said. If you happen to be sitting there when one of those corners blow out, "...you kind of look smashed all of a sudden."

Halladay and Borg went in with officials from the Mine Safety and Health Administration (MSHA), Emery County Sheriff's Office, F.B.I., and Utah State Mining inspectors.

Fire Marshal, Not MSHA, the 'Fire Experts'

Halladay said the reality of what he and Borg were involved in hit them last July, when they uncovered the compressor. "Everyone just kind of hung back," he said. "They said to us, 'we want to know what you guys think about this. You are the fire experts.'

"I was dumfounded. I said, "Don't you guys have a fire expert in here?

"They said, 'No.'"

Halladay and Borg had looked forward to gleening some new skills and some "tidbits" of information from a MSHA fire expert. They wanted to know about differences between mine fires and other kinds of fires. Instead, they got a lot of on-the-job training while digging up their own tidbits of information.

The people from MSHA brought in an electrical engineer, a mechanical engineer and a chemist to participate in the investigation. Halladay and Borg worked with them, but were themselves responsible for developing information on melting temperatures, coking of the coal, effects of temperature on the compressor, time of alarm, length of burn, the nature of the burn and the way the fire spread.

First Ever Fed-State Fire Team

"This is the first time I know of that MSHA has ever worked with a Fire Marshal's Office," said Borg. "We had great team effort with those guys. We were all just one team working for one cause, and that was to find out what happened.

Halladay emphasized that cooperation is critical to the successful outcome of an investigation the magnitude of Wilberg. He said that few people realize the complexity and size of an underground coal mine.

A coal mine is mapped out like a city. They have tunnels that are as big as city streets and are even named like streets — 1st South, 2nd South, 3rd South.

And the miners wanted to find out what happened. They were just as concerned as anybody else. After all, it was their "brothers" and a "sister" who died down there.

Going another direction there might be 5th Right, 6th Right and so forth. Crosscuts run in between.

Some of the tunnels are "in-by," meaning where the miners go "in" the mine. This is the area where the coal is mined. In-by is where the action is. The other tunnels are called "out-by" and are used as air-conduction channels and for other support functions in the mine.

A "sister compressor" located in Deer Creek Mine. It is a duplicate of compressor that burned in Wilberg.

Five Miles Underground

During the investigation, Halladay and Borg were down as far as five miles underground. They said at that point, they had no idea how to get back out, city streets or not. But the miners, or the "old boys" as Halladay called them, know the place like their own home town.

He said the miners have a real comradery and they take care of each other in the mine. "The first time I was in there, I was tired after having been there for several hours," Halladay said. "I sat down by a rib where a crosscut and an entry tunnel meet.

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Utah.

Wilberg ...from page 2

"One old boy came by and said to me you really hadn't ought to sit there son. He didn't say why. He just kept on walking."

Coal is soft, and in an underground mine the earth above pushes down on the walls with tremendous pressure. At the rib, or the corner of two tunnels, the pressure will sometimes force the coal outward.

Halladay later found out what the old miner had not said. If you happen to be sitting there when one of those corners blow out "... you kind of look smashed all of a sudden," he said.

Rookies In Clean Overalls

Halladay describes he and Borg that first day as looking like rookies in their clean coveralls. Halladay said it became obvious right away that they didn't know what they were doing. Even so, the miners accepted them.

But he and Borg soon found out they already knew a lot of what they needed to know. According to Borg, fire is a combination of chemistry, physics, thermodynamics, and convection currents. It's a science. He says you take that science and it doesn't make any difference where you're at — whether you're in a house, a coal mine or a high rise building. Fire still burns under the same principles.

Mine Ventilation Similar to High-Rise

They were concerned about the mechanical aspects of the mine's ventilation system. Air is forced through the mine with huge fans. It's the same in a high rise building where air is blown through a mechanical ventilation system. The two systems are similar in the way they affect fire.

The miners must have understood that the boys in the new coveralls were the ones who would eventually come up with the answers. And the miners wanted to find out what happened. They were just as concerned as anybody else. After all, it was their "brothers" and a "sister" who died down there.

Appearing from left: Lynn B. Borg, Lamar Guymon, Brent Halladay, Ted Thomas, Richard Grahm. Team is inspecting compressor similar to one that burned in Wilberg.

They made allowances for, were even polite about the gaps in Halladay and Borg's knowledge. They provided answers where they could, and provided back breaking labor when the answers were still buried. Halladay said that almost everything he and Borg did in the mine was dependent on the help of the miners.

The first step in the Wilberg investigation was to either eliminate or substantiate anything that could have accidentally caused the fire. Halladay said that in all fire investigations a determination of arson is not made until everything is eliminated that could accidentally cause a fire.

Eye-Witness Testimony

Investigators knew by eye witness testimony that the fire had come out of Number 4 Entry, near the opening to 5th Right. They reasoned that the fire might have been started by mine equipment operating in the area. And they knew that the only mine equipment in the

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Wilberg...*from page 5*

area was an air compressor and an electrical transformer located in Crosscut 35

Once mine crews had reclaimed the mine back to the Number 36 Crosscut Halladay and Borg spent three days underground getting the compressor and the transformer out

"Fire destroys its own evidence, so you have to be very careful," Halladay said "After we removed the compressor, I spent eight hours on my hands and knees with a mason trowel going through everything that was around or underneath that compressor Then we took a screen and sifted everything we picked up."

Missing Pop-off Valve

Investigators were especially interested in finding a pop-off valve from the compressor Without the valve in place, all the coolant would have blown out of the compressor The compressor would have overheated and possibly started on fire There was speculation that the valve had been deliberately removed

Several thousand tons of material taken from the area around the compressor was sifted by a mechanical shaker in an effort to find the valve As it turned out, one of the investigators had collected and bagged it when the crew had first started working near the compressor It had been so damaged by the fire that it was initially unrecognizable

Investigators spent a lot of time checking sister compressors in other mines When they realized they had already collected something that looked similar, a second look turned up the missing valve "If that valve had not been there," Halladay explained, "someone would have had to intentionally taken it out and it would have meant sabotage and arson."

> ***"After we removed the compressor, I spent eight hours on my hands and knees with a mason trowel going through everything that was around or underneath that compressor."***

Finding the valve, and finding it in a place where it would have naturally fallen as it burned off the compressor was helpful in determining that the compressor had started burning without any intentional, outside help

Mini-Mine Built at Sheriff's Office

After removing all the evidence from the mine the investigators made a mini mine-section back at the Sheriff's Office They reconstructed parts of the mine involved in the fire —laid electrical lines set the recovered equipment — put everything where it was prior to the fire "That's the reason it took all summer" said Halladay "By the time you go reclaim a mine, recover everything reconstruct it and then tear the machines apart piece by piece it takes a while"

Safety Switch Bypassed

Part of that investigative effort revealed that the high temperature switch on the compressor was not

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Wilberg...from page 7

Arson Investigator Lynn Borg, Utah State Fire Marshal's Office — not an easy guy to catch in the office.

working. "They had been having trouble with the switch malfunctioning," Halladay said, "so they bypassed it." Which meant if the compressor got hot and overheated, the safety mechanism was eliminated. It could not shut down.

In addition to the high temperature switch, the compressor's on/off switch had been bypassed. The only way it could be turned off was where it plugged into the electrical transformer.

Investigators originally considered the transformer as a possible cause of the fire. But they found that fire damage in the area of the transformer was not nearly as severe as it was around the compressor. They determined the transformer was working properly and eliminated it as a cause.

Coking Tells Fire's Intensity

One of the ways to measure the intensity of a coal mine fire is by the amount of coking that takes place. When coal gets hot enough, it turns into coke. Around the area of the compressor there was a tremendous amount of coking.

As the ventilating air in the mine moved across Crosscut 34, past the burning compressor, it fanned the fire in the same direction as the draft. The coking began at the right front side of the compressor, in the direction of 5th Right. In that area the coke was very thick.

Because of the intensity the fire eventually reached, many people thought the fire spread very quickly. Halladay and Borg said that wasn't the case. They found the fire spread in a normal manner.

Supervisors Go to Check Fire Report

At some point during the development of the fire and after the initial warning call, the supervisors working at the production site led a group of miners down the conveyor-belt tunnel, apparently to check the fire.

The conveyor-belt tunnel was the out-by tunnel, and was designated as the secondary escape route in case of an emergency. Fifth Right was the in-by tunnel and was the primary escape route.

By the time the miners reached the door to Crosscut 34, it was too hot to open. They decided to sit down and wait for the rescue that never came.

The last man to see them alive was the lone survivor of the disaster, Kenny Blake. Blake was a longwall mechanic. He had been called back to help with the production record after already having worked the day shift. He too went down the conveyor belt tunnel a short time after the initial group had gone to inspect the fire.

'Big-Wigs' Decide to Sit It Out

Kenny said he found the group of miners and "big-wigs" sitting it out by the hot door. He wanted to leave the mine through another tunnel that was not designated as an escape route. He tried to get Tom Hurst, a miner of 27 years, to go with him.

Tom wouldn't go. No one knows why. Kenny went ahead, and made it.

Unfortunately, both the primary and secondary escape routes intersected with Crosscut 34 at a point beyond where the compressor was burning. "Where that compressor was," said Halladay, "even if they would have

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Wilberg...from page 8

had multi-entry, I don't know how you would have prevented the disaster."

Mines in the East have multi-entry systems. There are several entries or escape tunnels from the area where the miners work. If a problem develops, the odds are better of finding an escape route with this system.

Mines Much Deeper Out West

In the western United States mines are generally much deeper underground. There is more earth above the tunnels, so the natural pressure on a mine's walls and ceilings increases with depth. And the more tunnels drilled through an area, the weaker that natural support.

"You can't believe mother nature's force," said Halladay. "I've seen huge iron support beams twisted like toothpicks and steel cribs crushed flat as the earth squeezes down."

Out West they often go with a two-tunnel escape system, under the philosophy that with fewer holes there is less chance of cave-ins. But, fewer tunnels mean fewer escape routes. It's a safety tradeoff often debated among miners.

Some are saying it's a tradeoff that didn't pay off at Wilberg.

Halladay said that once the fire at Wilberg reached full intensity, it got so hot that everyone was chased off the hill. The company was forced to seal off the entrance to the mine.

Mine Sealed to Suffocate Fire

The primary reason for the seal was to suffocate the fire. But even then, the coal continued to smolder. It took months for the carbon monoxide level to go down to a point that recovery crews were able to re-enter the mine.

Some people speculated during the interim that Wilberg would never open again.

Halladay and Borg credit Utah Power & Light Company with the success of the recovery effort. The company removed tremendous amounts of caved in coal and then rebuilt structural supports for no other purpose than to gain access to the burned area. Halladay said that was the only reason they got back into the mine to recover the bodies and do an investigation. "There are still mines today with bodies sealed up inside," he said.

By the time the miners reached the door to Crosscut 34, it was too hot to open. They decided to sit down and wait for the rescue that never came.

"There wasn't anything that we asked Emery Mining and Utah Power & Light to do that they didn't do," said Borg. "You couldn't ask for better cooperation."

Stalling Accusations Refuted

Borg refuted accusations of stalling or unnecessary delays in the two year recovery effort. He said people don't realize the complexity and the amount of work involved with reclaiming Wilberg. The fire came from the center of the mine and went all the way to the portals, he said.

Since investigators, miners and company officials worked so cooperatively, Borg had concerns over maintaining a public perception of the independence and credibility of the investigators.

"We couldn't have done anything in that mine without working with the miners," Borg said. "And you can't test compressors in other mines without working with Utah Power & Light.

In addition to the high-temperature switch, the compressor's on/off switch had been bypassed.

"We were really concerned that we didn't compromise our position — as closely as we worked with those people. But I would say we were extremely sensitive to maintaining a very unbiased and impartial position so that we could stay totally frank in our conclusions," he said.

Halladay feels confident that after the congressional hearings and the courtroom testimony are over, there will be no unanswered questions in the public's mind.

No Cover-up

The Fire Marshal's Office was in the investigation representing the public. "Law enforcement and public safety — that's my job to represent the citizens of this state," said Halladay. "I can say that for the Emery County Sheriff's Office as well. They were in there representing the citizens of that county and community who were killed in the mine. Nothing was covered up, and there were no questions left unanswered."

Halladay and Borg came to some conclusions about how the fire got started. They have recorded lots of facts about what happened once the flames broke out. And they have answers to a lot of questions they haven't responded to yet.

Those questions are waiting on 8 x 14 legal pads all over the country. Much of what Halladay and Borg know waits for interpretation by judges and juries in courtrooms crowded with inquisitive attorneys.

The big question will be decided then — Did 27 miners have to die? The courts will have the final say.

"Borg and I have done a lot of interesting investigations," Halladay said. "I would say this was probably the most interesting and challenging of our careers."

What he may yet have to say through an aged and furrowed brow is: "The investigation was only the beginning at Wilberg."

"A real friend is someone who takes a winter vacation on a sun-drenched beach and doesn't send a card."

— Farmers' Almanac

Cost Safety, Appropriations Executive Meeting

(Selected Excerpts)

Wilberg
CSAP Meeting Related Excerpts

12-14-82 Safety Director Video to report on Variance & Explain More Severe Accds

2-15-83 (W) IBD Needs attention for Sfty

Established policy of 3 letters of Safety Violations and an Employee is fired

Bill Z [illegible] May Need to Review our entire Safety program

I may attempt [illegible]
of Men away from Trip

Wilberg 82 [illegible].17

83 15.95

MHSA INVESTIGAT [illegible] [illegible]
[illegible] [illegible] Two yrs ago

Wilberg Bounce / Working
Need to ~~Stagger~~ entry ways to alleviate heavy pressure.

3-15-83

Tom Hirsch Crew Man hurt
Dave Bocard this was a preventable
accident
Need to conduct Extensive Investg.
in Accidents

Wilberg + DC. good up to
last few months

ordered to issue memo
defining accident. S. Dinsmore
is misleading.
Elec problem
Include Safety Comittee
members in Accident Investigtn

UMWA Should pay to investigate
accidents

Wilberg LW Cable problem
broke [illegible] loader
Pulled Belt in two
[illegible]
Belt we are having some elec problem.
Motors Burning Up [illegible]
Mud Bank [illegible]

4-12-83 Recess of PSC hearing
until 5-17
Visit by 11 PSC People 4-12-83
to Wilberg & D.C.

Wilberg 1/2 last year

Allegations down
Citations are down
Accident down due to [illegible] training

Implement stage [illegible]
Someone [illegible]
Exposure to injury
We need better [illegible]
People have been trained [illegible]

We Need to talk to More
people & Correct unsafe
Work Habits

Bill Z. directs George Bell
to correct problem of poor
Safety Record.

Bill Z & Emery agree we need
to [illegible] & determine
[illegible]

5-4-82
I.A appointed EVAL / Procedures / Analyze
Resources Exec Comm. → Pres

5-4-82 Read TBA Report
Highlights

In re: Wilberg Disaster Retrospect

1) Need PM Prog
2) L.V. Belt system is Weak
3) Improved Dispatch is Needed
4) Med [illegible] Not in Touch [illegible]
operation

5-7-82 [illegible]/W.M. Riley

5-20-82 Service Maint program
Views Came from below

8-[illegible] PM Mtg

6-XX-82 Recover Self Rescuer Into
Reduce Spares

Joe Got letter up 1 Shift of job.

Webb Various B
Motor
Haulage
Gear Heads
Conveyor Chain 8th Right
Roof Bolt problem

George B 4160 V. Blow Trip
Not know Cause!

2 Motors Burn out [illegible]
Ground wires caused them
broken yokes & splices

Belt Roller and Shaft
[illegible] [illegible] Cause
4" Shaft Broke in Half.

12-13-83 Find OUT NOT Sessions etc

Press Comments

God Bless & Guide Senator Hatch. ~~because~~ He is committed to the path of discovering the Truth.

I have said all these things before most [illegible] in 1982, 1983, and 1984.

I EVEN SAID them to UP&L investigators.

2-15-83 Letter to Unsafe Employees Statement
Place people on Corrective Action Prog.
Were these Ever Done!?

Bill - We MAY need To review
our Entire Safety Prog.
Jim ATwood Run Away Mantrip!

3-15-83 Non-permissable condition
UMWA Should pay To Inv. Acct
Wilberg Mine Build Up on Motors

4-12-83 Self Rescuers are Repaired 2X3 Times
Sitting Breaking

Need to Correct Unsafe Work
Habits
People become Complacent & lazy
& careless

Bill Z Told Group To
Correct poor Safety Record

Keep Water from Motors

Severly Connection 4160 line Blew
Not Known Cause!!
2 Motors burnt out due & known
cause

5-17-83 Final Self Rescuers

27-30 Self Rescuers Missing
at Wilberg
D.C. also 20-30 short

S&S Scoop problem

8-17-83 Closure orders are too High
more YTD than all 82

Next Month we Need a
Safety Plan

We Must Reduce Acc. & Closures

Recovery of Self Rescuers
Still A problem returned Equip
had No self rescuers!

PCV in Mines
Hit All 3 Mines by Next
Meeting! Report
George repair Board Cap Blow

Free Belt test system
maybe can do at Des Bee.

5-17-83 Final Self Rescuers

27-30 Self Rescuers Missing at Wilberty
D.C. also 20-30 short

S&S Scoop problem

8-17-83 Closure orders are too High.
More YTD than all 82

Next Month We Need a
SAFETY PLAN

We Must Reduce Acc. & Closures

Recovery of Self Rescuers
Still A problem returned Equip
had No Self Rescuers!

PCV in Mines
Hit All 3 Mines b/ Next
Meeting! Report
George repair Bad Cap Blow

Free Belt test system
maybe can do at Des Bee.

9-13-83 @ 9:55 Safety
82 Figures was in [illegible]

Self Rescuer Plans = Willing OK
DC. [illegible]
90 Day study Due end Sept

solution to Safety
More Training
Discipline

Cost Below Natl Average

Take care of items as they are detected

Tickets haven't worked

10-18-83 Methane Violations
Install CBF Monitors
Need Man to Read Out

11-14-83 Wrong X Cut Marking at DBD
Check & See Not happen again
Beltline Cited No Seal Inspection
Maintain PASSageway + Modifications
No Belt Monitor Installed [illegible]
Tex [illegible] Speed.

STATEMENT BY RONALD CARPENTER

I am Ronald Carpenter, Safety Committeeman, Local 2176, Wilberg Mine. I was a Longwall Propman on the crew that died in the 5th right section on December 19, 1984 at the Wilberg Mine.

It is a damn shame that I'm alive today because of an illness and my fellow workers are not because of the lack of concern and action on the part of the coal operator, Emery Mining and the Enforcement Agency, MSHA.

Many contributing hazards did exits on 12/19/84 which had a very strong impact on the entrapment and death of my friends. These hazards stemmed from the mining practices being used, to the extent that all escapeways that are required by law where a 2-entry system is practiced, was being used.

MSHA was aware of the hazardous conditions that existed several weeks prior to the fire, which caused such a tragedy to the community, loss of families, friends, fellow workers and jobs.

I feel that if there would have been more than two entries that possibly more people could have escaped. And that if the companies maintain a 3-entry system as well as they do a 2-entry system, they wouldn't have any problems holding the roof. While driving a 2-entry section, if there was trouble out by the section, the people in-by wouldn't have any place to go.

We need to eliminate the 2-entry system and have stronger laws and have the assurance that these laws will be enforced.

It's not bad enough that we have to breath coal dust for eight hours a day, now we have to also breath diesel fumes. We feel that for the amount of diesel equipment being used in a section that there isn't enough air.

That is why I am here today to show desire for more research for stronger enforcement and safer mining practices so that in the future that someone will not have to say "Thank God" that he or she was sick and unable to go to work.

We are putting our trust in you, our congressional representation, to listen to all views of this investigation and for you to use your knowledge to make stronger and better laws to protect us. So as we go to our jobs each day we know that we have men and women in our congress working to protect us from Mining Companies and agencies such as MSHA that have such a disregard for human life that they are allowed to turn their backs on normal safety precautions.

Coal Mining Safety Laws have come long way since my grandfathers day, but it also has a long way to go because of the use of modern-day technology. Better and faster is not always safer.

I miss my 26 brothers and/sister who had to die so needlessly. It has left such a terrible void in my life, our community, in the lives of their families and friends.

Thats is why I am here today, to ask you men and women to show concern for my life and the lives of all coal miners and to try to prevent another tragedy such as the Wilberg Disaster from happening in the coal fields again.

MSHA LEFT The Company mine coal in 13th Right with Basically The same Ventilation Plan That was in Affect at The Time of The Disater The mine operator and MSHA District 9 officals apparently have Not yet Realized The Reason why 27 miners were Killed at The mine

We Need Two or more escapeways on separated splits of Air. To Get out off The mine if This ever Happen's Agail

Any Body who works on Desial Equipment should certified and Fully Trained.

STATE OF UTAH
DEPARTMENT OF BUSINESS REGULATIONS
DIVISION OF PUBLIC UTILITIES

INVESTIGATION REPORT

ON

THE DIVISION'S REVIEW AND EVALUATION OF UTAH POWER & LIGHT COMPANY'S COAL MINE OPERATIONS INCLUDING THE ALLEGATIONS OF JAMES J. SIMONELLI

VOLUME I

NOVEMBER 3, 1986

PUBLIC SERVICE COMMISSION OF UTAH
CASE NO. 84-035-12
IN THE MATTER OF THE PUBLIC SERVICE COMMISSION'S
INVESTIGATION INTO THE CHARGES AND ALLEGATIONS
OF JAMES J. SIMONELLI

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I. SUMMARY

A. BACKGROUND OF THE INVESTIGATION

In August 1984, James J. Simonelli appeared before the Public Service Commission (Commission) and leveled charges of inefficiency, mismanagement, and resulting excessive costs in the operation of Utah Power and Light (UP&L) coal mines by Emery Mining Corporation (EMC). Mr. Simonelli, a former EMC employee, listed 82 separate charges in his allegations.

The Committee of Consumer Services (Committee), at the order of the Commission, assisted Simonelli in condensing his allegations into 22 major issues. After resolving some complex legal issues, the Commission, in April 1985, ordered the Division of Public Utilities (Division) to investigate those 22 issues, and in addition, the two more general issues of the efficiency of UP&L's coal mine operation and the propriety of the agreements between EMC and UP&L for the operation of the mine with regard to efficiency.

Mr. Simonelli allegations were the latest in a series of events which had caused the Commission and the Division to be concerned about UP&L's coal operation. The Division responded to the Commission order by initiating a four-pronged investigation. 1) The Division contracted with Gates Engineering (Gates) to provide an evaluation of the efficiency and productivity of UP&L's coal operations and to provide general mining knowledge and information as the Division required it. 2) The Division contracted with Energy Systems Research Group (ESRG) to provide an evaluation of the contractual relationship between UP&L and EMC. 3) The Division hired investigators to interview witnesses and obtain evidence to determine the validity of the Simonelli allegations. 4) The Division auditors began a painstaking 100 percent audit of the transactions between UP&L and EMC.

The Division investigation was delayed several times by various factors beyond its control. The investigation was finally concluded in October 1986 and a report of the investigation was prepared. This summary is a condensation of that report.

UP&L purchased its first coal mine property in 1972 and two additional mines were acquired in 1976. American Coal Company (ACC) operated UP&L's mines under two agreements until 1979 when UP&L became dissatisfied. ACC sold out to EMC which operated the mines from 1979 until April 1986, when UP&L, citing problems in obtaining adequate insurance, purchased the assets of EMC and began operating the mines itself.

B. CONCLUSIONS

UP&L's coal resource consists of high quality mines with good reserves. The mining plant and equipment are first class and modern. The mine planning and development are reasonable.

The cost-plus agreements between UP&L and EMC did not provide adequate regulatory oversight and had no incentives for cost control. Substantial ratepayer protections in the original agreements were deleted by amendment or practice without approval of the Commission. Certain negative covenants (prohibitions of specific EMC activities) contained in the agreements were repeatedly violated by EMC without response from UP&L. Such violations consisted of engaging in other business activities, pledging assets, making loans to officers and affiliated interests, and guaranteeing loans.

When UP&L allowed EMC to purchase ACC's assets and begin operating the mines, it did so without adequate study and consideration and without obtaining bids. EMC had no previous coal mining experience and was not qualified to operate the mines. EMC used consultants excessively, and failed to install adequate cost control, auditing, and preventative maintenance programs.

Employment levels were excessive for both management and the workforce. Employee benefit levels were excessive, and incentives and bonuses awarded for below average performance. Those bonuses and incentives were not approved by the Commission.

EMC initiated a deferred compensation plan whereby ratepayers paid the premiums for whole life insurance for EMC managers and workers. EMC owned the cash values of the insurance policies and borrowed against the policies for its own benefit. EMC took steps to maximize the cash values of the policies, at ratepayer expense. UP&L never formally authorized this plan, but reimbursed the costs in full. The Commission was never made aware of this plan, nor asked to approve it.

Productivity at the UP&L coal mines was below average, which caused increased coal costs to ratepayers. Mine safety at the UP&L mines was about average for the coal mining industry.

EMC's management was either aware of many of the before-mentioned problems, or could have been aware of them with reasonably diligent management.

UP&L made the earlier decision to change mine operator and the later decision to take over the mine operations themselves without any formal study or evaluation of alternatives. UP&L allowed the removal of cost control incentives and other ratepayer protections from the agreements. It also allowed increased incentives fees and authorized bonuses based on unrealistic low standards without commission knowledge or approval.

UP&L reimbursed EMC for inappropriate expenses including consultant services, legal fees, lobbying, donations, parties, and services performed by others for EMC that were not related to coal mining. It discontinued paying for some items at Commission request, then increased the management fee to allow EMC to cover the same expenses.

UP&L failed to establish adequate cost control systems and auditing programs. UP&L management was either aware of the coal mine problems discussed previously, or could have been aware with reasonably diligent management.

The above conclusions, in effect, substantiate 16 of Mr. Simonelli's allegations. Five other allegations were not substantiated. One allegation was determined to be not significant enough to justify the resources needed to investigate it. While the Division does not want to downplay Mr. Simonelli's contribution, the Commission is aware that the problems that he attested to are merely symptoms of a problem that the Commission and the Division have been concerned about for some time.

In light of all these conclusions, UP&L's mine operation can be characterized as having low productivity, major inefficiencies and higher costs than justified. During the four years from 1982 to 1985, ratepayers paid $104,000,000 more for their energy than was appropriate. Of this total, about $59 million was due to low productivity; excess workforce and management cost $24 million; inappropriate incentives and bonuses cost $10 million; UP&L reimbursement of inappropriate expenses (including the salary continuation insurance costs) was $6 million; duplicate functions between EMC and UP&L cost $4 million; and excessive consultants cost $1 million.

The Utah ratepayer portion of these inappropriate costs included in the utility's fuel charges was about $73,000,000, or about $103,000,000 including interest.

C. RECOMMENDATIONS

The Division recommends that a public hearing be set to receive evidence supporting this report of the Division and any response of other parties. The hearing should also quantify any refund to ratepayers and determine the method of refund. The Division would be ready to file testimony in 90 days.

The Division recommends that the quantified amount, roughly $103,000,000 be refunded to ratepayers in not more than four annual payments. The average residential ratepayer would receive about $70 in total refund, but the refund would be proportional to energy use.

The Division recommends that the Commission order UP&L to guarantee access to necessary information for regulatory oversight regardless of the system UP&L establishes to mine its coal. However, information is not enough without the experience to understand it. Therefore, the Division also recommends that the Commission order UP&L to provide funds for the Division to retain a coal mining expert for at least several years. In time the Division should be able to develop or hire its own expertise.

The Division recommends that UP&L be required to hire a consultant to evaluate methods of increasing coal mine productivity and establish cost control to reduce costs. UP&L should also hire an expert on coal combustion to evaluate methods of reducing costs related to ash content of the coal.

The Division recommends that the adjustments which it has discovered be used to establish a baseline for appropriate coal costs. The Commission should consider adopting an incentive provision in determining what the reasonable coal cost recovery rates for UP&L will be. The Division believes that such cost incentives will reduce the future need for expert monitoring of the mines.

The Division recommends that the Commission order the Division Management Audit Section to periodically review UP&L's management process to determine if the problems discovered in the coal operations are specific to the coal operation or are more general.

Finally, the Division recommends that the Commission authorize it to be funded by UP&L to investigate two additional coal related issues and four issues not related to coal.

J. Robert Oppenheimer once wrote:

> We do not believe any group of men adequate enough or wise enough to operate without scrutiny or without criticism. We know that the only was to avoid error is to detect it, that the only way to detect it is to be free to enquire. We know that in secrecy error undetected will flourish and subvert.

This quotation is a classic description of why monopolies should be regulated. This case is a classic case of why monopolies are regulated. The Division recognizes that any business subjected to the intense scrutiny of this investigation would show problems, but the findings in this case are significant and major. The Division felt obligated to report all the "warts" that it found, even though some are relatively insignificant when compared to the total cost of coal. Even the multimillion dollar overcharge becomes small when the refund per customer is calculated. The Division hopes that the inherently dramatic nature of some of the warts does not obscure the most important finding of the investigation -- the management philosophy and lack of control that allows problems like these to go on uncorrected for many years. It is clear that the regulatory system does not work as well as it should by itself. The Division urges the Commission to reconsider the efficiency incentive program that the Division recommended to it several years ago.

VII. CONCLUSION

A. EVALUATION OF ALLEGATIONS OF JAMES J. SIMONELLI

In August 1984, James J. Simonelli appeared before the Commission and leveled charges of inefficiency, mismanagement and resulting excessive costs in the operation UP&L coal mines by EMC. Simonelli's testimony included the identification of 82 separate allegations. The Committee of Consumer Services, at the order of the Commission, assisted Simonelli in summarizing and condensing his allegations into 22 major categories.

The following is an identification of the 22 allegations and with respect to each, an evaluation of the validity of the allegation based on the Division's total investigation. The costs of validated problems are summarized in Section VII.D.

Allegation No. 1:

Substance: There were excessive numbers of management employees at EMC. The management fee paid to EMC by UP&L was unnecessary and could have been eliminated through operation of the mines directly by UP&L rather than through an independent contractor. The independent contractor contributed nothing to mining operations not available through direct operation by UP&L.

Evaluation: Excessive management and its contribution to unnecessary increased costs of coal has been verified. Management to workforce ratios exceed industry experience.

Direct operation of the mines by UP&L would have eliminated management fees and bonuses. The Savage organization brought no expertise which resulted in efficient and effective mine operations justifying the amounts of management fee paid. It is clear that the elimination of the independent contractor would have eliminated fees and bonuses to the management company.

Conclusion: Allegation valid.

Allegation No. 2:

Substance: Functions, responsibilities and personnel with duplicated assignments were unnecessarily replicated in the operations of EMC and UP&L.

Evaluation: Substantive duplication of functions, responsibilities and personnel assignments are evident in comparing the operations of EMC and UP&L. The result has been unnecessary expenses. The attempt by UP&L to forge an independent contractor relationship while retaining substantial oversight and control necessitated parallel management functions in the two companies at the expense of the ratepayer.

The Division's experts point out significant savings which could have been achieved by elimination of duplicated practices, personnel and overhead and the retention of an expert qualified mining consulting firm to advise UP&L.

Conclusion: Allegation valid.

Allegation No. 3:

Substance: The mining operations of EMC were characterized by waste of materials, supplies and equipment.

Evaluation: The fact that EMC's operations, and the operations of its predecessor ACC, were characterized by waste of materials and supplies is documented by testimony of EMC workforce, management, and officers. Officers and management of EMC did not have available to them effective and timely management reports for review of the use of materials and supplies by component, to permit management assessment of specific areas of waste, loss, theft or other inappropriate use. Other waste is documented in the overstaffing of management and workforce personnel, the abuse of equipment through ineffective preventive maintenance, and improper utilization of machinery and equipment.

Conclusion: Allegation valid.

Allegation No. 4:

Substance: EMC retained unnecessary outside consultants resulting in excessive costs passed through to the ratepayer. EMC should have had the expertise and capability.

Evaluation: Unnecessary outside consultants were hired by EMC. The costs were reimbursed by UP&L and ultimately passed on to the ratepayer.

The need for EMC to ratin unnecessary consultants is based in part, on the decision of UP&L to accept EMC, a company with no previous mining experience, as it contract miner. EMC simply lacked the necessary competence. Consultants retained by EMC frequently benefitted Savage Industries at the expense of UP&L.

Conclusion: Allegation valid.

Allegation No. 5:

Substance: EMC adopted a deferred compensation plan for its management employees known as the Salary Continuation Plan. The plan was excessive in its cost on its face, was poorly administered resulting in excess costs, and was reflective of possible illegal activity.

Evaluation: EMC adopted a deferred compensation plan for select management employees, the viability of which was underwritten by whole life insurance policies on the life of the manager. EMC also elected to provide life insurance coverage for its workforce employees with whole life policies. The cost of the policies, as the program was administered, was about 300 percent of the premium for term life insurance in like face amount. The whole life policies generated substantial cash values which were withdrawn by EMC. The entire amount of the premium payments which created in the cash value build-up was reimbursed to EMC by UP&L at ratepayer expense. Cash was borrowed from the policies by EMC and was loaned by EMC to finance the continuing operations of other

Savage affiliated companies. The effect of the plan was to provide working capital to Savage affiliated companies at the expense of the ratepayer.

Adoption of the plan substantially increased the cost of administrative fees paid by EMC for accouting and legal matters. Those costs were also reimbursed to EMC by UP&L. Upon the takeover of the mining operations from EMC by UP&L in April 1986, UP&L agreed to pay $2,400,000 to EMC to acquire the asset reflected in the policies. UP&L had already paid all of the premiums resulting in the creation of that asset. The Salary Continuation Plan is not typical in the coal industry, was unnecessary to the operations of EMC, was excessive in cost, and was clearly a vehicle by which Savage Industries benefitted directly at the expense of the ratepayer.

The Division cannot judge the legality of the program.

Conclusion: Allegation valid.

Allegation No. 6:

Substance: A management employee of EMC responsible for decisions with respect to adoption of the Salary Continuation Plan received from the vendor selling the plan, a trip to Hawaii and a personal loan in an amount exceeding $100,000.

Evaluation: Raymond Daniel Hartman, an officer of EMC who played a key management role in development and adoption of the Salary Continuation Plan, accepted a trip to Hawaii, in company with his wife and another executive of a Savage company and his wife, from the insurance agent selling the coverage to EMC. At approximately the time the trip was taken, Hartman facilitated the issuing of a $72,000 check by EMC as a deposit on the contemplated insurance. The check was issued before approval of the Plan by EMC's Board of Directors. It also preceded by about three months the effective date of workforce whole life policies under the Plan.

Just prior to the effective date of the management whole life policies under the Plan, Hartman received a $110,000 loan from the insurance agent selling the coverage to EMC. Loans by the agent to Hartman eventually totalled over $150,000. Commissions earned by the insurance agent as a result of EMC's insurance coverage under the Plan are estimated to exceed $1,000,000 to date.

The parties claim that Hartman was not influenced to recommend adoption of the Plan by EMC by any of the above and that it was not the intention of the agent to exert such influence. Each claims the development of their personal friendship was the reason the agent agreed to loan Hartman the initial amount of $110,000 for the construction of a personal residence. Each party asserts the loans were repaid with interest. The Division cannot judge illegality; however, it is clear and each of the parties admit, that their actions are reflective of extremely poor judgement.

Conclusion: Allegation valid.

Allegation No. 7:

Substance: EMC failed to conduct effective internal audits of its operation. When audit results were provided management of EMC they were indifferent to audit results or recommendations.

Evaluation: The internal audits, when EMC had an internal auditor, were ineffective, lacking in direction, and of little substance. Audits conducted by operating departments were often definitive in their findings, such as those with respect to preventive maintenance; however, evidence shows that with respect to many findings, the areas of deficiency were not acted upon by management. EMC, for most of its operating history, did not have an internal auditor or function. What little auditing was done was not pursued to a successful conclusion.

Conclusion: Allegation valid.

Allegation No. 8:

Substance: EMC did not have an effective preventive maintenance program which resulted in abuse and loss of equipment, materials, supplies and labor.

Evaluation: Internal audits by EMC with respect to its preventive maintenance program in 1982 resulted in findings of substantial program failures. There was also documentation of competent preventive maintenance in some areas. Findings in the 1982 audits were verified in 1983 by a consultant's preventive maintenance study. Whose findings in 1983 mirrored in some aspects the findings in 1982. Management had failed to act effectively upon its earlier findings. In one of EMC's mines, preventive maintenance programs which were to have been adopted several years prior were found not to have been adopted.

Evaluation by Gates Engineering results in a finding that in the operations of EMC there was excessive delay time in the production of coal. One of the factors contributing to this was mechanical and electrical downtime which is associated with the standard of maintenance of the face equipment.

Conclusion: Allegation valid.

Allegation No. 9:

Substance: Unnecessary public relations costs incurred by EMC and reimbursed by UP&L.

Evaluation: The Division found that there are some costs which were generally included in the title "public relations" which are not appropriate for reimbursement to EMC by UP&L; however, the specific public relations function of EMC directed out of the offices of Savage Industries was not inappropriate or excessive. The specific services rendered EMC by Bob Henrie at the time of the Wilberg Mine disaster are commended by many and served the interests of EMC.

Costs found to be inappropriate are those which are associated with lobbying and government relations matters, which if incurred by UP&L would not be eligible for recovery from the ratepayer. The Division also found that there were inappropriate and excessive costs in the area of public/employee relations resulting from company parties; participation by EMC in community affairs and the giving of gifts; the purchase of hats, jackets, belt buckles and items of a like nature for presentation to employees and for the purpose of enhancing the name of EMC in the community.

Conclusion: Allegation valid in general concept.

Allegations No. 10 and No. 11:

Substance: Management of EMC knew of waste, inefficiency, mismanagement and excessive costs in its operations and concealed such information.

Evaluation: EMC has essentially denied the allegations of Simonelli and claimed it is one of the most efficient and productive underground coal mining operations in the United States. However, EMC received reports from employees and consultants on various waste and inefficiency problems. EMC also had access to information on cost trends.

The Division concludes that EMC knew, or should have known, that its operations were inefficient, wasteful, and costly. EMC's failure to acknowledge that can be based on one of two factors, either EMC has "concealed" problems by not taking notice of information to which it had access and should have been aware of, or it has not acknowleged problems of which it was aware.

Conclusion: Allegation valid in substance.

Allegation No. 12:

Substance: EMC awarded business to vendors and entered into contractual relationships upon payment of kickbacks and gratuities to EMC personnel.

EMC improperly awarded contracts to Savage affiliated companies.

Evaluation: Interviews with vendors and others, with valid knowledge of EMC's purchasing practices have not produced information that substantiated this allegation.

Practices within the purchasing department of EMC provide the opportunity for abuse. Some violations of policies and procedures have been admitted by former employees of EMC. The practice of favoring certain vendors in the purchase of emergency or single source items has been verified; however, the position of favored vendor is most often earned by providing services of benefit to EMC at the vendors expense and the relationship is in the best interest of EMC.

Conclusion: Allegation not valid.

Allegation No. 13:

Substance: EMC's officers and management were guided by an unreasonable expansionist philosophy.

Evaluation: It is understood that Mr. Simonelli's allegation primarily referred to the increase in personnel which occurred at EMC in the 1979 to 1982 period. EMC did permit its personnel levels, both management and workforce, to increase unnecessarily and unreasonably.

EMC did not have effective management controls in place to control the personnel complement. EMC functioned without any written statement of its overall plan or objectives. Employees characterize the situation at EMC after its assumption of mining operations as a flurry of "empire building."

EMC explains the reasons for growth in its personnel complement as being due to mine development, preparation for increased coal production demands and excessive absenteeism and turnover within its workforce. EMC's representations are not supported by an analysis of its results.

Conclusion: Allegation valid.

Allegation No. 14:

Substance: Safety violations and fines resulting from EMC's mine operations were excessive and the costs were reimbursed by UP&L at ratepayer expense.

Evaluation: During the period from 1979 to 1982, the record of safety violations, accidents, and their severity at EMC resulted in the classification of EMC as "target mines" by MSHA. They were classified as being among the top five of the worst underground coal mine operations in the United States. The cost of fines resulting from safety violations were reimbursed to EMC by UP&L at ratepayer expense.

Gates Engineering reviewed the MSHA records of EMC's operations for the period from 1982 through 1985 and found nothing unusual when compared with industry standards or experience. EMC's operations were considered to be in conformance with safe mining practices and standards during mine site inspections in 1985 and 1986.

Conclusion: Allegation valid historically, but not at present.

Allegation No. 15:

Substance: Excessive capital equipment was purchased by UP&L. Equipment with a servicable life was unjustifiably classified as obolete and was junked, sold or permitted to sit idle. Excess inventory levels.

Evaluation: The capital equipment of EMC, as provided by UP&L, is considered to be uniformily first class. This is typical of utility-owned mines but not coal mines in general. Excessive idle equipment was not observed at the time of site visits in 1985 and 1986. No detailed analysis was made of the historical perspective of capital equipment purchased, retired, sold, or scrapped.

During the early years of EMC's operation, excessive levels of inventory were accumulated. Inventory levels estimated to be almost 300 percent of that required were accumulated. Following a 1982 Commission order, inventory levels declined from a peak level of over $13,000,000 in 1981 to about $5,700,000 in 1985.

Conclusion: Allegation valid historically but not at present.

Allegation No. 16:

Substance: Excessive rock and ash in coal mined causing damage to UP&L equipment.

Evaluation: EMC has regularly produced coal from UP&L's mines with rock and ash content in excess of specifications. UP&L has now relaxed the specifications. Poor mining practice on occasion produced excessive rock and ash. No evidence was developed that rock was intentionally mined. UP&L facilities do not provide for the washing of coal to reduce ash content.

UP&L denies power plant ash problems or ever experiencing a need to operate its generating facilities at less than desired or required levels of output because of poor coal quality. Power plant records indicate some problems otherwise.

Excess rock and ash increases the cost of coal to the ratepayer and understates the true cost of coal per ton.

Conclusion: Allegation valid.

Allegation No. 17:

Substance: Purchase of inefficient, costly, limited use software.

Evaluation: No conclusion was reached on this allegation due to the limited information obtained in the investigation and the limited time devoted to it.

The Walker Interactive Software system is considered by management to be satisfactory. It has been determined that EMC does not have available certain management information reports considered standard in the coal mining industry. It is not known whether this is because of deficiencies in the system or the fact that management simply has not requested the reports.

The fact that the system was restricted to EMC use only is typical of such contracts in the software industry. No attempt was made to evaluate the cost/benefit analysis EMC made with respect to the purchase.

Conclusion: Conclusion not developed due to lack of data and negligible rate impact.

Allegation No. 18:

Substance: Production was manipulated to maximize bonus earned by EMC. Reports of accidents, which would have negatively impacted the bonus, were not filed.

Evaluation: The Division has reviewed carefully the entire bonus system which has existed between UP&L and EMC and finds it excessive in its cost and based upon factors not in the interest of maximizing productivity at the lowest possible cost. UP&L amended its contracts to eliminate the only incentive program for its contract miner based upon reduction of costs. An additional layer of bonus to that provided in the contracts was proposed by EMC and agreed upon by UP&L in 1982. That bonus plan was not revealed to the Commission or the Division until this investigation. EMC has substantially increased the total of its annual fees and bonus over the term of its contract with UP&L while producing less coal at excessive cost.

Conclusion: Allegation valid.

Allegation No. 20:

Substance: Employee morale was poor and negatively affected productivity.

Evaluation: Both former and current employees of EMC verify the existence of poor employee morale at EMC. They attribute it primarily to the treatment of workforce by management as mere pawns. (A few interviewees did not believe there was a morale problem among employees.) The problem is characterized as being significantly more than normal union/management relationship problems. The site survey by Gates in 1985, found examples of poor morale and poor union/management relations. The degree to which poor morale has impacted productivity and increased costs has not been measured, but is clearly contributory to Gates' finding of below average productivity.

Conclusion: Allegation valid.

Allegation No. 21:

Substance: EMC purchasing policies operated with no commitment to competitive bidding.

Evaluation: Reference is made to the evaluation under Allegation No. 12. EMC has a well documented policy and procedure with respect to its purchasing activities. The purchasing managment personnel appear to be committed to adherence to that policy which generally requires competitive bidding. While it is recognized that there are opportunities for a breach of those policies and practices, and that some breaches have in fact occured, there is no evidence that EMC purchasing has functioned with a guideline other than acquisition of specified products at the best possible price.

Conclusion: Allegation not valid.

Allegation No. 22:

Substance: UP&L has been indifferent to the excess costs and inefficiencies in the operations of EMC.

Evaluation: The findings set forth in this report characterize the operations of EMC as being inefficient and resulting in the production of coal at excess cost.

UP&L had the right under the terms of its contract with EMC to inspect records and have access to the mining operations to an almost unlimited extent. UP&L represents that it has monitored EMC's operations and finds its results acceptable.

The conclusion must be drawn that either UP&L did not adequately monitor and review the operations of EMC and its results, or UP&L did monitor EMC and is indifferent to the inefficiencies and excess costs. In either case, UP&L has been less than responsible and diligent in the performance of its obligation to operate at the lowest possible cost consistent with ensuring the integrity of continued coal supply.

Conclusion: Allegation valid.

VII. CONCLUSIONS

B. GATES ENGINEERING CONCLUSIONS REGARDING THE UP&L MINE OPERATIONS EVALUATION

The Division hereby references and incorporates the Gates Engineering report to the Division entitled "Evaluation on Utah Power and Light Company Coal Mining Operations and Resources" (Appendix D) as an integral part of the Division's Investigation Report to the Commission. Gates Engineering, an expert coal mining engineering consultant was retained by the Division perform an evaluation of the UP&L coal mine properties and operations which the Division did not otherwise have the expertise to perform. The Gates evaluation was performed pursuant to a project proposal submitted to the Division which detailed the specific objectives and issues to be addressed in their operations study.

Gates reported the following conclusions to the Division regarding the UP&L coal mine operations, and resources:

1. The mines, equipment, and other physical plant at the UP&L mines are modern, state-of-the-art operations giving an impression that no expense was spared at the facilities.
2. The UP&L coal mining operation administered by EMC incurred unreasonably high mining costs due to substandard productivity. Consequently, UP&L paid excessive coal costs conservatively estimated to range between $65 and $82 million in a four year

period from 1982 to 1985. The actual mine productivity during the last four years has been substantially less than represented by EMC and UP&L. EMC utilized unique criteria to measure productivity and compared itself to mines which had vastly different operating conditions.

3. UP&L's decision to allow EMC to assume responsibilities as their independent coal mining contractor without negotiations, bids, or proposals being made was imprudent, because EMC was totally inexperienced in underground coal mining.

4. The contractual relationship between UP&L and its independent coal mining contractor caused duplication of costs approximated at $1 million annually, and did not adequately protect UP&L from incurring excess coal costs caused by lack of productivity.

5. The nature of the cost-plus agreements necessitated UP&L becoming involved in the mining operations contrary to their representations that the relationship was that of an independent contractor.

6. The contracts required UP&L to bear the burden of providing the mining plans and determining whether mining costs incurred by EMC were reasonable.

7. Both EMC and UP&L utilized outside consultants when the necessary expertise was, or should have been, available in their extensive mining staffs;

resulting in excess costs approximating $500,000 for the period.

8. EMC and UP&L had not significantly improved the problems of poor housekeeping and management-employee relations identified in a 1976 consulting report to UP&L as primary areas for improvement at the Deer Creek mine. Those improvements were a major factor in forecasts of coal cost reductions which UP&L represented it could attain if the Commission approved acquisition of the Peabody properties.
9. UP&L allowed EMC to implement very lucrative benefit plans which were excessive and not representative of those normally available in the coal mining industry. EMC labor benefits exceeded workforce direct labor costs which is unusual in the coal mining industry and indicates excessive benefits.
10. UP&L also allowed EMC to implement unusually lucrative incentive and bonus programs. The established productivity thresholds for the bonus program were very lenient compared with industry standards and EMC's established average productivity. The total $10 million incentive and bonus costs for 1982 to 1985 reimbursed by UP&L was considered excessive in light of the standards upon which they were based and achieved productivity by EMC.

11. EMC maintained an excessive workforce during the period maintained a higher than normal percentage of management employees than is common in the coal mining industry. Gates estimated the excess labor costs related to unnecessary manpower to approximate $8.5 million in 1982 alone.

12. UP&L coal mine planning and development was reasonable; however, once again Gates believed that UP&L and EMC depended on outside consultants to perform work that could have been performed with existing staffs.

13. Health and safety programs and practices at the mines appeared adequate and usual for the coal mining industry. Gates did not observe any overt unsafe situation existing at the time of their mine visits and did not believe their citation rate or severity by MSHA was excessive for their operations.

14. Gates audit of the coal reserve quantities in UP&L owned properties agreed with UP&L estimations reported to the Commission.

15. The UP&L power plants documented coal ash contents much higher than originally anticipated by UP&L when the boilers were designed. Gates believes that UP&L may have incurred increased maintenance and operating costs at its generating stations because the ash content of the coal burned has exceeded the percentage upon which the boilers were designed.

The conclusions reached by Gates Engineering support the other investigation findings and the conclusions of the Division investigation team. None of its conclusions appeared to contradict or otherwise mitigate the cost impact of the deficiencies in operating practices and administration disclosed by the Division's investigation.

VII CONCLUSIONS

C. ENERGY SYSTEMS RESEARCH GROUP CONCLUSIONS REGARDING THE REGULATION OF UP&L COAL SUPPLY ARRANGEMENTS

The Division hereby references and incorporates the report to the Division by Energy Systems Research Group (ESRG) entitled "The Regulation of Utah Power & Light Company's Coal Supply" (Appendix E) as an integral part of the Division's Investigation Report to the Commission. ESRG is a non-profit research corporation formed by scientists and economists to perform studies of energy systems, public utility regulation, and resource planning. The Division retained ESRG to evaluation UP&L's decision to provide fuel for its generating station from "captive" coal mines; the coal mining contractual relationship between UP&L and EMC; and analyze the alternative regulatory approaches to ensure reasonable fuel prices for UP&L.

ESRG reported the following conclusions to the Division regarding the regulation of UP&L coal supply arrangements:

1. The contractual relationship between UP&L and EMC resulted in divided management with both entities having responsibility for major decisions impacting mine operations and coal costs.
2. The contractual realtionship was neither an arms-length competitively established relationship with appropriate protective features built in, nor a direct subsidiary operation which could be appropriately monitored and regulated by the Commission.

3. The Commission should either require UP&L to operate the coal mines through a subsidiary where regulatory access and oversight would compensate for the cost-plus arrangement, or require UP&L to establish competitive bidding procedures for operation of the coal mines to competitively regulate the costs of coal production.
4. In view of the ongoing competitiveness and oversupply in the coal industry, any independent coal supply contract should include a market reopener provision.
5. UP&L should be allowed to provide only that portion of its coal requirements from its owned coal reserves which it can demonstrate is economical as part of an optimal mix of sources.
6. Standard arms-length contracting provides the basis for effective utility regulation of coal supply arrangements for both long-term supply and short-term purchases.
7. The Commission should consider setting a market price cap on coal costs allowable to UP&L to encourage efficiency and protect against excessive costs.
8. ESRG recommends that the Commission introduce incentives relating to fuel costs as a part of their fuel cost and procurement arrangement regulatory philosophy.

9. The documentation indicates that the mine properties were originally acquired at reasonable prices.

The conclusions regarding the contractual relationship reached by ESRG appear to be consistent with the other findings and conclusions of the Division investigation team . Their recommendations for regulatory action appear well supported, and the Division considered them in determining its own overall regulatory recommendation to the Commission. They will also be considered in scheduled cases on fuel cost recovery.

VII. CONCLUSIONS

D. QUANTIFICATION OF EXCESS COSTS

The Gates report and Section V.F of this report quantify significant areas of excess fixed costs. When these costs are added to the cost of low productivity and the excess incentive and bonus costs, an accurate picture of the excess costs paid by ratepayers can be drawn.

The table on the third page following combines the Gates report findings to those of the Division. They include the following:

1. Excess Fixed Costs

a. Excessive workforce in 1982, described on page 62 of the Gates report. The total excess workforce cost is $8,343,242.

b. Excessive use of consultants, described on page 68 of the Gates report. Total excess consultants is $535,575.75.

c. Duplication of costs between the EMC's and UP&L's mining departments, described on page 25 of the Gates report. Gates concludes that the mining property could have been administered for $200,000 annually instead of the $1.1 to $1.8 million that UP&L was spending. The Division estimates UP&L would still have about $200,000 annually in overhead costs even if the M&E Department duplication was phased out. The total excess M&E cost is $4,332,278.

d. Inappropriate reimbursements to EMC were quantified by the Division auditors. These costs are described in Section V.F of this report. The Salary Continuation Plan costs are the main element of this adjustment (See Section V.D.) The total inappropriate reimbursement cost is $6,063,347.

e. Excess management employees as described by Gates on page 63 of their report. Gates concludes that EMC maintained 39% more management employees than the industry average, over the four year period. The Division estimated the cost of excess management employees over the four year period at $15,976,350, based on a one to four union-to-manager ratio and a $36,000 annual wage and overhead cost per manager.

2. Cost of Low Productivity

The above costs are fixed costs as described by Gates. The total of these costs must be subtracted from the annual fixed costs on Line 3 of the table. The remaining adjusted annual fixed costs are then applied against standard production levels to determine the cost increase due to substandard production levels. The method is identical to that used by Gates on page 50 of their report. The resulting cost of low productivity is $58,481,422.

3. Excess Variable Costs

Incentives and bonuses are inappropriate costs that vary with coal production (See Section V.E.) Gates quantifies this excess coat on page 62 of its report as $9,980,844. On Lines 11 and 12 of the table, the Division's adjustments for the incentive and bonus costs and inappropriate reimbursements are added back to the amount of excess costs due to substandard productivity. The total excess costs is shown on Line 13 as $104,191,822.

That number is the total UP&L amount. The Utah jurisdiction amount is shown on Line 15, and interest is added at the approximate interest rate used in the EBA calculations. The total estimated refund due Utah customers is $102,840,009. This number will vary slightly with more detailed interstate allocation and interest calculations.

Some recommendations by Gates were not used by the Division in this report, such as the return on investment in the coal mines, and the ash content of coal. These items may not be appropriate to address through the Energy Balancing Account, and are appropriately reserved for more study before a general rate case.

DIVISION OF PUBLIC UTILITIES
SUMMARY EXHIBIT
Estimate of increased cost due to reduced productivity at UP&L coal mines
with Division adjustments included

	1982	1983	1984	1985	TOTAL
1 EMC ANNUAL PRODUCTION (TONS)	5,094,738	4,616,118	4,041,461	3,014,144	16,766,461
2 ANNUAL FIXED COSTS	$88,309,753	$69,390,918	$64,539,130	$48,285,042	$270,524,843
3 LESS DIVISION ADJUSTMENTS	17,468,315	6,211,301	5,982,056	5,589,121	35,250,792
4 ADJUSTED ANNUAL FIXED COSTS	70,841,438	63,179,617	58,557,074	42,695,921	235,274,051
5 FIX COSTS PER TON PRODUCED	$13.9048	$13.6867	$14.4891	$14.1652	$14.0324
6 PERCENT OF STANDARD PRODUCTION	66.82%	74.62%	75.57%	88.02%	74.24%
7 ANNUAL PRODUCTION @ STANDARD	7,624,276	6,185,997	5,348,182	3,424,469	22,582,924
8 FIXED COST PER TON @ STANDARD	$9.2916	$10.2133	$10.9490	$12.4679	$10.4182
9 FIXED COST INCREASE PER TON DUE TO SUBSTANDARD PRODUCTION	$4.6133	$3.4734	$3.5401	$1.6973	$3.6142
10 ANNUAL FIXED COST INCREASE	$23,503,361	$16,033,689	$14,307,247	$5,115,889	$58,960,186
11 PLUS DIVISION ADJUSTSMENTS	17,468,315	6,211,301	5,982,056	5,589,121	35,250,792
12 PLUS INCENTIVE AND BONUS PLAN	1,652,710	2,433,354	3,964,568	1,930,212	9,980,844
13 TOTAL EXCESSIVE COSTS	$42,624,386	$24,678,344	$24,253,871	$12,635,222	$104,191,822
14 UTAH ALLOCATION PERCENTAGE	71.16%	69.56%	68.88%	68.30%	
15 UTAH AMOUNT	$30,329,530	$17,166,413	$16,706,462	$8,629,755	$72,832,160
16 ACCUMULATED INTEREST TO 12/86	$17,132,107	$7,149,847	$4,522,907	$1,202,988	$30,007,849
17 TOTAL	$47,461,637	$24,316,260	$21,229,369	$9,832,743	$102,840,009

Summary of the Division of Public Utililties' Adjustments

	1982	1983	1984	1985	TOTAL
A. EXCESSIVE WORKFORCE IN 1982	$8,343,242	$0	$0	$0	$8,343,242
B. EXCESSIVE CONSULTANTS	233,330	60,289	189,387	52,570	535,576
C. UP&L-EMC DUPLICATE M&E DEPT	1,117,178	1,138,954	1,362,307	713,839	4,332,278
D. INAPPROPRIATE REIMBURSEMENTS	2,025,185	1,397,927	1,306,462	1,333,772	6,063,347
E. EXCESS MANAGEMENT EMPLOYEES	5,749,380	3,614,130	3,123,900	3,488,940	15,976,350
TOTAL (TO LINE 3 ABOVE)	$17,468,315	$6,211,301	$5,982,056	$5,589,121	$35,250,792

VII. CONCLUSIONS

E. INVESTIGATION CONCLUSIONS

> We do not believe any group of men adequate enough or wise enough to operate without scrutiny or without criticism. We know that the only way to avoid error is to detect it, that the only way to detect it is to be free to inquire. We know that in secrecy error undetected will flourish and subvert.
>
> J. Robert Oppenheimer

This quotation is a classic description of why monopolies should be regulated. This case is a classic case of why monopolies are regulated. It appears that some managers who should have known better got caught up in an "activity trap" because of the cost plus nature of their regulated environment and failed to exercise prudent management. An activity trap is a situation where managers get so caught up in performing an activity that they lose track of the original purpose behind the activity and the resources that must invested to perform the activity.

This section combines the conclusions of individual sections VII.A through VII.D and the general conclusions reached by the Division in the overall study.

Simonelli Allegations

1. Sixteen of the 22 Simonelli allegations were found to be true or substantially true. Five of the allegations were found to be not true. For one other allegation the Division was not able to obtain data to prove or disprove the allegation, but the relative impact was judged to be too small to justify the effort of obtaining the necessary data. The substance of the 16 correct allegations is included in the following conclusions.

2. The Simonelli allegations are symptoms of a much larger problem the Division has been concerned about for some time.

Resource

3. The original UP&L decision to own its own coal source was made 14 years ago. Evaluation of the decision is beyond the scope of this study. No subsequent study of continuing ownership in the face of changed conditions was ever made.

4. The coal resource in the UP&L mines is a high quality resource with adequate reserves of the approximate amount that UP&L has estimated.

5. The mines, equipment, and physical plant are in modern, state-of-the-art, first class condition. Planning and development are reasonable.

-Agreements

6. The original operating agreements had some significant cost control incentives and other ratepayer protections built into them.

7. UP&L and ACC, and later EMC, made modifications to the original operating agreements through amendments, letter agreements, and practice that removed many of the ratepayer protections provided by the original agreements. None of those modifications were presented to the Commission for approval, nor were they approved by the Commission.

8. The awarding of cost plus contracts without bid does not allow for regulatory oversight and is not in the public interest. The cost plus contracts between UP&L and EMC, especially as modified, provided no incentives for EMC to control costs or to improve efficiency. Therefore this type of contract was not appropriate.

9. The operating agreements contain indemnification provisions whereby EMC agrees to protect UP&L from loss from any lawsuit resulting from the operation of the mines.

10. The relationship between EMC and UP&L fostered a situation where in some cases EMC and UP&L had duplicate efforts and in other cases no one accepted responsibility.

11. The UP&L operating agreements with EMC included negative covenants which prohibited certain activities which could have diverted EMC's attention from its coal mine responsibilities and made it less able to perform its indemnification. Those prohibitions included engaging in other business activities, pledging assets, making loans and investments, and guaranteeing loans.

EMC Operations

12. EMC was not qualified to operate the UP&L mines by lack of mining and managerial training and skills. It hired consultants to do work it should have been able to do.

13. EMC repeatedly violated the negative covenants of the agreements. It engaged in other businesses, pledged its assets, made loans to officers and affiliated companies, and guaranteed loans. All of these activities were of sufficient magnitude to distract EMC from its coal operations and endanger its ability to perform under indemnification.

14. EMC used its position as contractor as a "cash cow" to provide funds far in excess of the management fee for the use of other Savage firms and for the benefit of the owners. It regularly took advantage of its position for its own gain. It substantially increased the incentives and bonuses under the agreement with UP&L approval but without Commission approval.

15. EMC did not operate the mines at an appropriate level of efficiency. Their overriding goal was increased production. Cost control systems were minimal and ineffective. Workforce and management costs were substantially higher than they should have been and productivity was substantially lower.

16. EMC instituted a deferred salary program called the Salary Continuation plan, that was funded by whole life insurance on EMC's managers and workforce. The whole life insurance cost several times what term insurance would cost, but had the advantage that it built up cash values that EMC used for its own benefit and that of affiliated companies. EMC also borrowed against this insurance. UP&L ratepayers paid the premiums of this extra cost insurance.

17. EMC top management was aware of many of the problems and mismanagement. Some of the problems resulted directly from the actions of EMC's Chief Executive Officer. EMC could and should have been aware of other problems with reasonably diligent management.

18. At present, safety conditions in the mine are typical of the industry.

UP&L Operations

19. UP&L, upon becoming dissatisfied with its coal mine operator, ACC, allowed that unsatisfactory operator to pick its own successor. That successor, EMC, was not qualified by either training or experience. EMC was approved by UP&L's Vice President, President, and Board without study, investigation, or even any written recommendations or documentation of qualifications. The choice was also made without consideration of alternatives or consideration of other bids. The choice was therefore not appropriate.

20. UP&L agreed with EMC on the removal of cost control incentives and other provisions in the agreements which acted to protect ratepayers.

21. UP&L inappropriately allowed EMC to increase fees, bonuses, and incentives under the agreements.

22. UP&L reimbursed EMC's Salary Continuation Plan for several years without ever approving it as a reimbursable expense.

23. UP&L reimbursed EMC for other inappropriate including consultants, lobbying, donations, parties, legal fees, and services performed by others for EMC that were not related to coal mining.

24. UP&L discontinued reimbursing EMC for MSHA fines, parties, and some other non-coal-mine related expenses at Commission request. Then UP&L increased the management fee to allow EMC to recover these same expenses.

25. UP&L was unaware of the violations of the negative covenants and was unconcerned when made aware by the Division.

26. UP&L failed to file with the Commission for approval amendments and other modifications of the agreements including increased management fees, bonuses and incentives.

27. UP&L failed to establish adequate cost controls either in the agreements, or in the operations of the mines. It had no specific auditing guidelines or programs for the mines. Recommendations for the audits that were conducted were often overruled by the M&E department.

28. UP&L' overriding goal in operating the mines was increased production. Cost was not given sufficient attention.

29. The above conclusions demonstrate that the UP&L top level management responsible to oversee the operation of the mines lacked the mining and management skill to operate the mines efficiently.

30. UP&L was aware of some of the problems and mismanagement. Others it could and should have been aware of with the exercise of reasonably diligent management.

31. The responsibility at UP&L for allowing these problems must rest with the Senior Vice President, who was responsible for the coal mines; the Executive Vice President, who was his immediate superior for a time and was also responsible for the Legal Department who failed to make the appropriate filings; the President and the Directors, who failed to exert adequate control over UP&L's largest single expense item.

32. The ash content of UP&L's coal exceeds plant specifications and may be causing excess costs. This area warrants additional study.

33. Two coal-related areas merit further investigation, coal transportation and Energy Mutual Insurance matters.

Ratepayer Impact

34. Because of all the foregoing, UP&L ratepayers were charged approximately $104,000,000 more for energy than they should have been, not including interest on the excess cost. The Utah ratepayer share of that amount, adjusted for interest since the costs were charged to ratepayers, is approximately $103,000,000.

The $104,000,000 can be roughly broken down into the following categories:

excessive workforce	$8 million
excessive consultants	$1 million
duplicate facilities	$4 million
inappropriate reimbursements	$6 million
Excessive Management	$16 million
Low Productivity	$59 million
Incentives and Bonuses	$10 million

All of the above conclusions can be simply summarized: EMC was not a qualified coal mine operator when UP&L allowed it to assume responsibility for the UP&L coal mine operations; EMC acted improperly, inefficiently, and generally in Savage's best interest, but not in the public interest; UP&L acted improperly, inefficiently, and generally did not administer its coal mine operations in the public interest; the contract, especially as modified, was not appropriate for this relationship and was not in the public interest. Consequently UP&L ratepayers were required to pay too much for their energy useage during the last four years.

VIII. RECOMMENDATIONS TO THE COMMISSION

The Division would like to put the conclusions of the previous section in a proper context before making recommendations based on them. The Division investigation spanned 19 months, involved at times 12 professional expert investigators, cost more than $900,000, involved scanning more than 5000 documents and 50,000 pages of documents, and required conducting more than 200 interviews and 20 depositions. That amount of effort has been well worth what it cost ratepayers.

Although the conclusion that UP&L ratepayers had to pay $104,000,000 in excess costs from 1982 to 1985 is significant, if that amount is refunded to customers, residential customers on average would receive a refund of less than $70.

The Division's study shows that the excessive cost in 1985 was only about 10 percent of the total fuel cost in that year. The magnitude of the problem has been declining since 1982. Although both EMC and UP&L deny it, the Division believes that the glare of the regulatory spotlight that has been on them the past four years has been an important element in cost reduction decisions.

Since UP&L took over the coal operations in April 1986, it has worked on solving some of the more significant problem areas mentioned in this report. However, that doesn't resolve three questions: 1) who should pay for the excess charges of the past, 2) what controls are needed to prevent a similar problem from recurring, and 3) have all the corrections been made that need to be made?

A. HEARING

1. The Division recommends that the Commission set a public hearing to hear the evidence underlying this report and its conclusions and allow other parties to respond. The hearing would also allow the Division to provide a final quantification of excess costs and propose the amount and method of any refunds. The Division will be prepared to file its testimony in 90 days. If the other parties can respond in like fashion, the hearing could be held in about six months.

The UP&L decision to take over operation of the mines has muted many of the recommendations that the Division might have otherwise made. However, important recommendations can still be made in three areas: 1) regulatory oversight,
2) productivity, and 3) allowable costs.

B. REGULATORY OVERSIGHT

The Oppenheimer quote in the conclusions section of this report stated, "We know that the only way to avoid error is to detect it, that the only way to detect it is to be free to inquire." Free access to information is an important regulatory tool. With UP&L operating the mine, access of regulators to the information necessary for adequate regulation should not be a problem in the future. However, this most recent change in coal mine operator may be no more permanent than the last one. Therefore, the Division and the Commission need to preserve their ability to access coal mine operation information. In addition to information access, regulators need the experience and knowledge necessary to use that information. The Division therefore recommends:

2. Regardless of the type of operation selected by UP&L in the future, the Commission should require full Division access to all information necessary to adequately regulate the cost of fuel.

3. The Commission should authorize the Division to contract with a recognized coal mining expert, similar to Gates, for regular and continuing oversight of UP&L coal mining operations for at least several years. The firm would be selected by the Division with Commission approval and would report to the Division, but would be paid for by UP&L. UP&L should be allowed to include these costs as a part of its fuel cost. The Division estimates the cost of such oversight to be about $400,000 the first year and $200,000 for subsequent years.

C. PRODUCTIVITY

The Gates report pointed out significant productivity problems at the UP&L mines. The Division investigation pointed out cost control problems. Therefore, the Division recommends that:

4. The Commission should order UP&L to hire a recognized coal mining expert of their own choice, with Commission approval, to recommend ways of improving productivity and establishing effective cost controls. The report of this expert should be available to the Division and the Commission. Subsequent to the report of this expert, UP&L should be required to file action plans and periodic reports with the Commission showing its progress in improving productivity.

D. ALLOWABLE COAL COSTS

The Division has computed the excess coal costs billed to ratepayers, and has adjusted total coal costs to calculate the net uncontested coal costs billed to ratepayers. Because the dollar amounts of identified excess coal costs prior to 1982 are relatively small and since the Division specifically reserved the issue of coal costs since and including 1982, the Division recommends that:

5. The Commission should order that the excess costs quantified for the period 1982-1986 be refunded to customers on a kwh basis, either as a one-time adjustment or in a maximum of four annual adjustments. Such refunds to customers should be fully identified as being a result of this investigation.

6. The Commission should consider the corrected fuel costs, as derived in this case, in determining the appropriate baseline of reasonable coal costs for UP&L. This issue should be reserved for the UP&L rulemaking proceeding relating to coal costs because the Division has not evaluated all possible alternatives in this investigation. The baseline could be used to structure an incentive provision in coal cost recovery. For example, the Commission could order that the baseline plus or minus 5 percent, would be the only amount that UP&L be allowed to recover in full in future rate cases. Any coal expense above this amount, UP&L would recover only one-third, and would therefore lose two-thirds. Any fuel expense below this amount, UP&L would be allowed to collect the actual expense and two-thirds the difference between the actual and the established baseline.

E. GENERAL

It would be a rare business that didn't have some problem areas which would have come to light if subjected to a detailed investigation similar to this review of UP&L coal mine operations and administration. Therefore, the Division was not surprised to discover some problem areas at EMC and UP&L. The Division, however, was surprised to discover the amount of high level decision making which occurred in both organizations without formal study and analysis, or without regard to agreements, orders, and statutes.

Also, the Division was very concerned about the strange memory lapses of some top EMC and UP&L officers and managers that allowed them to forget names, places, and dates of key events but allowed them to remember and state with emphasis that they had never seen any waste or inefficiency in the coal mine operations.

Two issues related to coal costs were not resolved that appeared to merit resolution. Finally, in thecourse of the investigation, four allegations were brought to the Division's attention regarding UP&L that did not relate to coal mining. The Division therefore recommends the following additional studies:

7. The Commission should order the Division Management Audit Section to periodically analyze UP&L's general management decision process to determine if the proper goals, analysis and decision making are taking place at department head levels and above.

8. The Commission should order UP&L to retain appropriate experts to determine the costs and benefits of available alternatives to reduce ash content of the coal.

9. The Commission should authorize the Division to investigate the identified coal transportation problems and Energy Mutual insurance issue, and provide funding through UP&L similar to the funding for this investigation.

UNITED STATES
DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION

District 9

PRELIMINARY
REPORT OF INVESTIGATION
(UNDERGROUND COAL MINE)

MINE FIRE

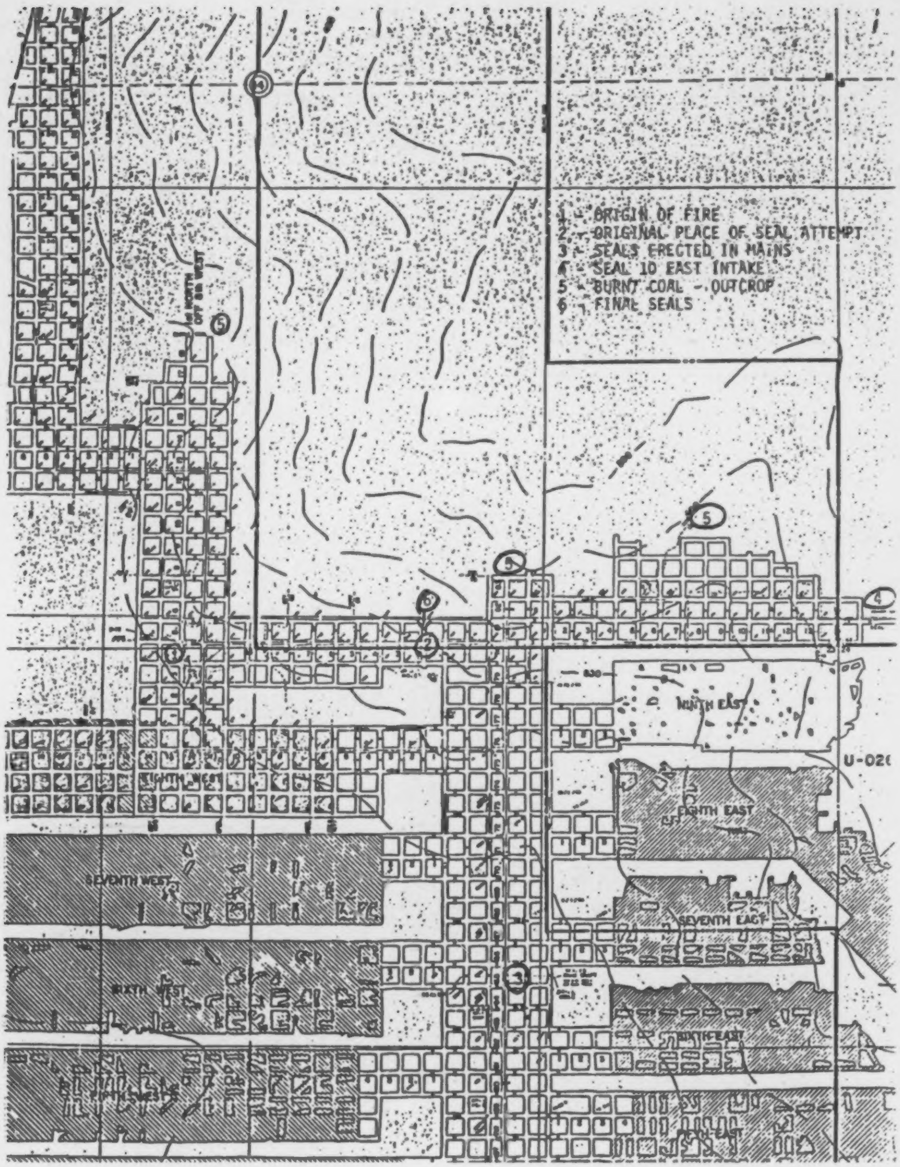
Beehive Mine (I.D. No. 42-00082)
Emery Mining Corporation
Orangeville, Emery County, Utah

December 29, 1983

by

Dick K. Jones
Robert L. Huggins
Coal Mine Safety and Health Inspectors

Originating Office - Mine Safety and Health Administration
P.O. Box 856, 575 East First South, Price, Utah 84501
Jensen L. Bishop, Subdistrict Manager


1 - ORIGIN OF FIRE
2 - ORIGINAL PLACE OF SEAL ATTEMPT
3 - SEALS ERECTED IN MAINS
4 - SEAL 10 EAST INTAKE
5 - BURNT COAL - OUTCROP
6 - FINAL SEALS
NINTH EAST
U-02
EIGHTH EAST
SEVENTH EAST
SIXTH EAST
FIFTH EAST
EIGHTH WEST
SEVENTH WEST
SIXTH WEST
FIFTH WEST

Abstract of Investigation

U.S. Department of Labor
Mine Safety and Health Administration

Authority—This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164.

Section A—Identification Data

1. Title of investigation: Mine Fire
2. Date MSHA investigation started: December 29, 1983
3. Report release date: November 26, 1984
4. Mine: Beehive Mine
5. Mine ID number: 42-00082
6. Company: Emery Mining Corporation
7. Town, County, State: Orangeville, Emery County, Utah
8. Author(s): Dick K. Jones/Robert L. Huggins

Section B—Mine Information

9. Daily production: 1,000 tons
10. Surface employment: 2
11. Underground employment: 6
12. Name of coalbed: Blind Canyon
13. Thickness of coalbed: 19 feet

Section C—Last Quarter Injury Frequency Rate (HSAC) for:

14. Industry: 8.64
15. This operation: 0.00
16. Training program approved:
17. Mine Profile Rating:

Section D—Originating Office

18. Mine Safety and Health Administration
Coal Mine Health and Safety District No.: 9
Address: P.O. Box 856
Price, Utah 84501

Section E—Abstract

On December 29, 1983 at approximately 2:10 a.m., a fire occurred along the 10th West intake air entry of the Beehive Mine at approximately the No. 82 crosscut. The fire started on a Wagner diesel powered utility truck while it was being trammed from the belt entry into the intake air entry.

Section F—Mine Organization

Company officials:	Name	Address
19. President:	Neal Savage	P.O. Box 310, Huntington, UT 84528
20. Superintendent:	George Bell	P.O. Box 310, Huntington, UT 84528
21. Safety Director:	Bert Oman	P.O. Box 310, Huntington, UT 84528
22. Principle officer—H&S:	George Bell	P.O. Box 310, Huntington, UT 84528
23. Labor Organization:	UMWA - District 22	P.O. Box 783, Price, UT 84501
24. Chairman—H&S Committee:	Asay Pierce	P.O. Box 783, Price, UT 84501

MSHA Form 2000-57, Apr 82 (revised)

COMMENTARY

On December 29, 1983 at approximately 12 midnight, the crew entered the Beehive Mine on the graveyard shift. Randall Stilsen and Armando Miles were instructed by their foreman Kay Truman to take a Wagner diesel powered utility tractor and travel to the No. 4 belt drive to complete work on a belt splice and repair a water leak. After completing the belt splice, they attempted to repair the water leak but over tightened a bolt and broke the clamps. Stilsen then got on the utility tractor to travel to the belt repair shop for a new repair kit but as he traveled out of the belt entry into the intake a fire suddenly broke out directly behind him and flames started coming up behind the operator's seat and into the operator's compartment. At this time, Stilsen stated he saw diesel spraying out from under the fuel tank and he jumped from the tractor and attempted to scoop up some rock dust from along the rib and throw on the flames. Seeing this did not help, he attempted to reach into the operator's compartment to shut down the engine but was unable to do so because of the heat and flames. Stilsen stated that he made a quick look for a fire extinguisher but could see none. He then ran to the No. 4 belt drive and grabbed a fire extinguisher and noticed as he picked up the extinguisher felt light. He then ran back to the fire and tried to actuate the extinguisher and unable to do so he ran back to the drive and attempted to contact the section by phone but the phone was dead. He ran inby the fire to the No. 5 belt drive and was able to contact the section foreman Craig Larsen and informed him of the fire. Stilsen then obtained a fire extinguisher from the No. 5 drive and attempted to go back up the belt entry to the fire but encountered heavy smoke. He went back down the belt entry out into the intake and waited for the section crew.

Upon learning of the fire, section foreman Craig Larsen instructed his crew to gather all available fire extinguishers and some rock dust and accompany him. The crew then traveled in a Isuzu diesel pickup truck up the intake to a point a few hundred feet inby the fire where they met Stilsen and encountered smoke. They provided him with a self-contained self-rescuer as extra ones were available on the mantrip. They put on their rescuers. Some of the crew stated they had to use a pocket knife to break the seal on the Ocenco rescuers. They attempted to pass the fire by way of the belt entry but were unable to do so because of heavy smoke and heat. They crossed into the return air entry and was able to pass the fire. Two of the crew testified they had trouble breathing while wearing the rescuers but stated they felt they would not have been able to escape without them. After passing the fire, two members of the crew, Brien Jex and Armando Miles, attempted to travel down the intake to see if they could fight the fire directly, however, the heat and smoke were burning their eyes through the goggles and they were unable to get to within more than a few hundred feet of the fire. At this point, they all traveled back out to the No. 3 belt drive where they were met by Jim Behling and Rodney Cox on an Eimco mantrip locomotive and all were transported out of the mine.

SEQUENCE OF EVENTS AND RECOVERY OPERATIONS

Jack Matekovic, MSHA supervisor of the Orangeville Field Office was notified by Bert Oman, Safety Director of the Beehive Mine. Jack Matekovic instructed Dick K. Jones and John R. Turner, MSHA inspectors to investigate. They traveled to the mine and a 103K order was issued December 29, 1983, at 3:15 a.m., requiring all persons to be withdrawn from the Beehive, Deseret and Little Dove mines. This action was deemed necessary because the Beehive and Deseret mines are connected by three raise-bin shafts, and the Little Dove mine is located next to the Beehive Mine which made it possible for smoke to be drawn into the Little Dove mine.

The company notified mine rescue teams of their problem. Jensen L. Bishop, subdistrict manager, arrived at the mine and met with company officials at about 5:00 a.m. When the teams arrived and an organization was set up, a mine rescue team made an exploratory trip into the mine to evaluate the situation and to see if the fire could be fought directly. The attempt was futile and it was decided to build temporary seals across the three entries, three crosscuts inby the junction of the mains and 9 west entries (see map). Construction was started and shortly thereafter atmosphere readings were taken with hand-held methanometers at the worksite and main fan indicated a sharp rise in combustible gasses into an explosive level and the team was removed from the mine.

Another meeting was held with all parties and at 5:30 a.m. on December 30, 1983, a mine rescue team entered the mine to construct temporary seals at No. 65 crosscut across all 6 entries and the 10 east intake portal (see map). At 4:45 a.m. on December 31, 1983, the temporary seals were completed and all persons withdrawn for a 72-hour waiting period. On January 3, 1984 at 9:00 p.m., mine rescue teams entered the mine to construct permanent seals. The 10 east intake portal seal was built with the aid of a helicopter due to its remote location. All seals were completed on January 5, 1984 at 11:30 p.m.

The Denver Safety and Health Technology Center was contacted and two people with a gas chromatagraph was dispatched to the mine to analyze air samples collected in the sealed area from behind the seals and from boreholes drilled into the fire area from the Deseret Mine about 80 feet below. During the following two weeks, samples taken indicated the presence of oxygen behind the seals to be coming from the outcrop and a decision was made to bore holes from Deseret to the Beehive mine and induce water. On January 21, 1984, water was pumped through 7 boreholes with a water pressure of 195 p.s.i. delivering 180 gallons a minute. Approximately 14 million gallons of water was pumped during this operation. The temperature and atmosphere in the fire area were monitored through 8 holes drilled into the area for this purpose.

On January 30, 1984, a meeting was held at the Beehive mine to discuss a company proposal plan to breach the seals and explore inby but based on the samples collected in the sealed area, conditions were not suitable for entering the sealed area at this time. The mine, when developed, approached the crop in some areas and total pillar extraction had been practiced at some locations within the sealed area and analysis indicated that the probability of oxygen migrating from these areas was supporting partial combustion to the fire. Monitoring of the fire area continued until February 24, 1984 at which time the company again submitted a plan to relocate the seals across the 9th west entries between the Nos. 1 and 2 crosscuts.

On February 25, 1984, another plan was submitted by the company and their consultants, Don Mitchell and Woods Talman, was approved by MSHA and a decision was made to enter the mine following intake air through the 10 east portal on February 29, 1984. Due to the rugged terrain and inexcessibility of this portal, a helicopter was employed to transport the mine rescue teams and material for this operation. Two way radios were used for communications from the portal to the command center until the mine rescue teams reached a pre-drilled borehole in the mains just outby 9 west entries. They hooked up a telephone to the Deseret mine phone system through the borehole and had direct communication to the command center. The work progressed very satisfactorily without incident and the 3 temporary seals were in place by 6:00 p.m. on February 29, 1984. The outby areas of the mine were ventilated and permanent squeeze seals were erected. This allowed less oxygen to migrate into the sealed area from the outcrop and provided a way to drive entries around the fire area with the intention of further sealing the fire area from the inby end and restoring the mine to a productive status.

At this writing, sample analysis show favorable results and the fire appears to be extinguishing (see attached analysis graph).

FINDINGS OF FACT

A 103k order was issued on December 29, 1983 and the 103k order is still in effect. The fire area is sealed. A final report will follow after recovery operations are completed.

CONCLUSION

According to the operator of the diesel scoop, the fire started from a broken fuel line. At this time the scoop is behind the fire seals. The mine has a crew working outby the seals getting the mine ready so that mining can be done around the seals.

Respectfully submitted,

Dick K Jones
Dick K. Jones

Robert L. Huggins
Robert L. Huggins

Approved:

Jensen L. Bishop
Jensen L. Bishop
Subdistrict Manager

APPENDIX

The investigation was conducted by the Mine Safety and Health Administration and those persons furnishing information and/or present during the investigation were:

Emery Mining Corporation Officials

Bill Zeller	Senior Vice President Operations
Jim Hamlin	Vice President Operations
Morgan Moon	Engineer
Art Bruno	Maintenance Manager
Evert W. Winder	Director of Safety
Ray Guymon	Safety Specialist
George Bell	Mine Manager
Bert Oman	Safety Director
Dwayne Jones	Safety Inspector
Dale Grange	Engineer
Woods Tollman	Consultant
Don Mitchell	Consultant

Mine Safety and Health Administration

Jensen L. Bishop	Subdistrict Manager
Jack Matekovic	Supervisory CMS&H Inspector
Robert L. Huggins	CMS&H Inspector
Dick K. Jones	Coal Mine Safety & Health Inspector
John R. Turner	Coal Mine Safety & Health Inspector
Robert L. Baker	Coal Mine Safety & Health Inspector

Technical Support

Ralph Foster	Mining Engineer, Denver, Colorado
Jerry Gregory	Chemist, Denver, Colorado
Larry Cato	Engineering Technician, Denver, Colorado
Linda Zeiler	Chemist, Pittsburgh, Pennsylvania

Mine Rescue Teams

Emery Mining Corporation

Gary Christensen
Brian Bloomquist
Forrest Adison
Stewart Foster
Danny Jones
Robert Hill
Russell Labrum
Vernon Watson
Ray Guymon
James Behling
Brian Jex
Gordon Larsen
Kevin Tuttle
Tony Koss
Gorden Bell
Earl Snow
Wade Gordon
David Pope
Lester Walls
Scott Timothy
Harley Bassinet
Joe Jensen
James Nay
Roger Bailey
Wallis Clark

Ken Burgener
Ron Carpenter
William Harbaugh
Barry Jacobs
Karl Bessey
Monty Miller
Benjamin DiCaro
Karl Jones
Marvin Garrett
William Sherman
Delroy Peacock
Jay Frandsen
Kerry Lake
Marvin Luke
Ernest Jensen
Gayle Jensen
Warren Oviatt
Larry Shiner
Jesse Gordon
Lowell Hansen
Dennis Jones
Dale Bradley
Loren Marshall
Al Christensen
Len Johnson

Southern Utah Fuel Company

Gary Jensen
Kent Larsen
Loreis Kjar
Brian Stewart

Fred St. Pierre
Jody Malgram
Bruce Lindsay
Gary Leaming

Natomas Trail Mountain Coal Company

Allen Childs, Captain
Randall Ralths
Joe Fielder
Jack Fielder

Mike Hurst
Dan Hanna
Dean Whipey
James Earl

Valley Camp Coal Company

Roland Tallerico, Captain
Ron Paletta
William Jeskey
Shane Hansen
Steve Carlton
Jay Montgomery
Mat Sadler

Soldier Creek Coal Company

Rick Olsen, Captain
Chuck Bentley
Kirt Tatton
Sheldon McKenbrick
Dennis Blanton
Tom Kelley
Lester Leturgez
Ray Bridge

Kaiser Steel Coal Company

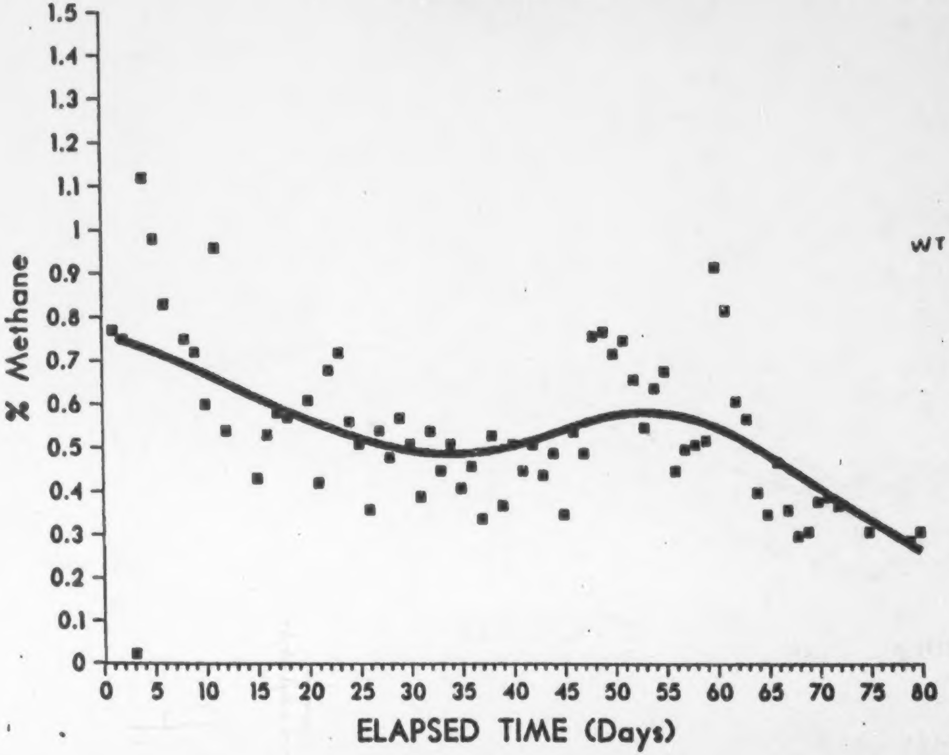
Rex Alger, Captain
Dave Lauriski
Ray Ferguson
Darrell Leonard
Jerry Howell
Darrell Valdez
Jeff Hunt
Bart Hyith
Larry Westbrook
LeLand Lobato

Price River Coal Company

John O'Green, Captain
Rudy Madrigal
Laine Adair
Randy Tatton
Ron Giocolletto
Domick Garascio
Robert Jones

PLOT BH1CH4

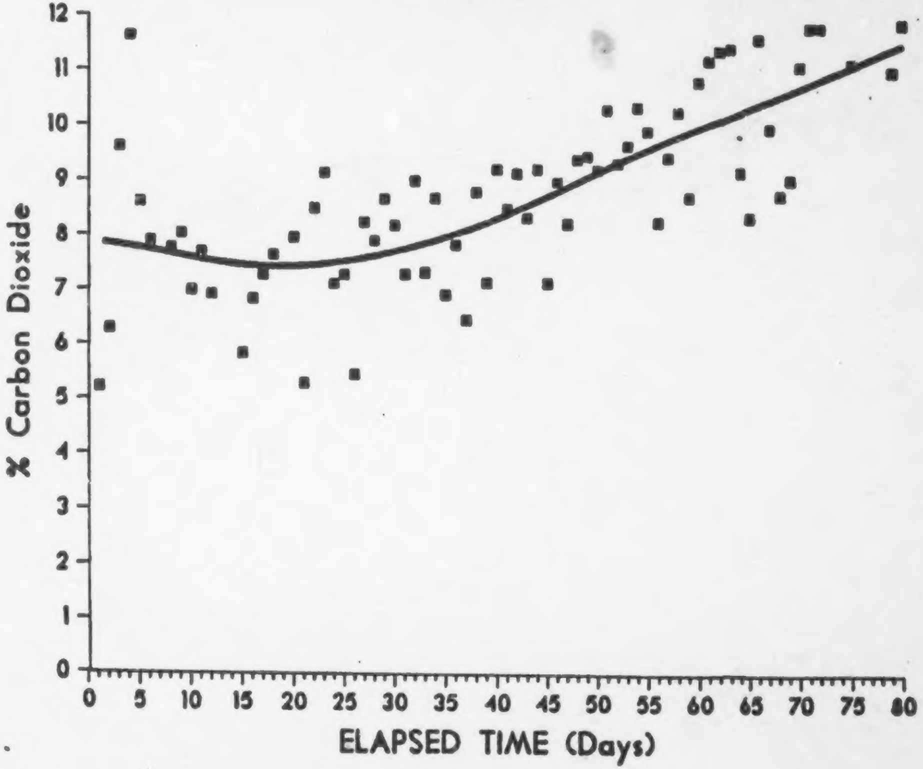
Methane Concentration in Beehive Mine
BOREHOLE #1



WT = .6

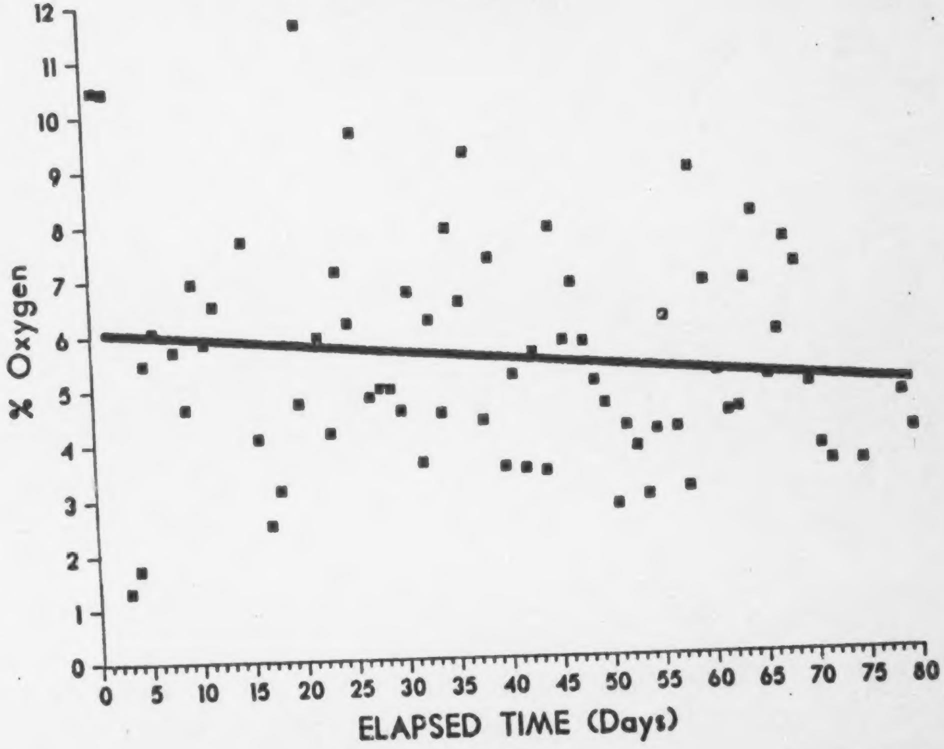
PLOT BH1CO2

Carbon Dioxide Concentration in Beehive Mine
BOREHOLE #1



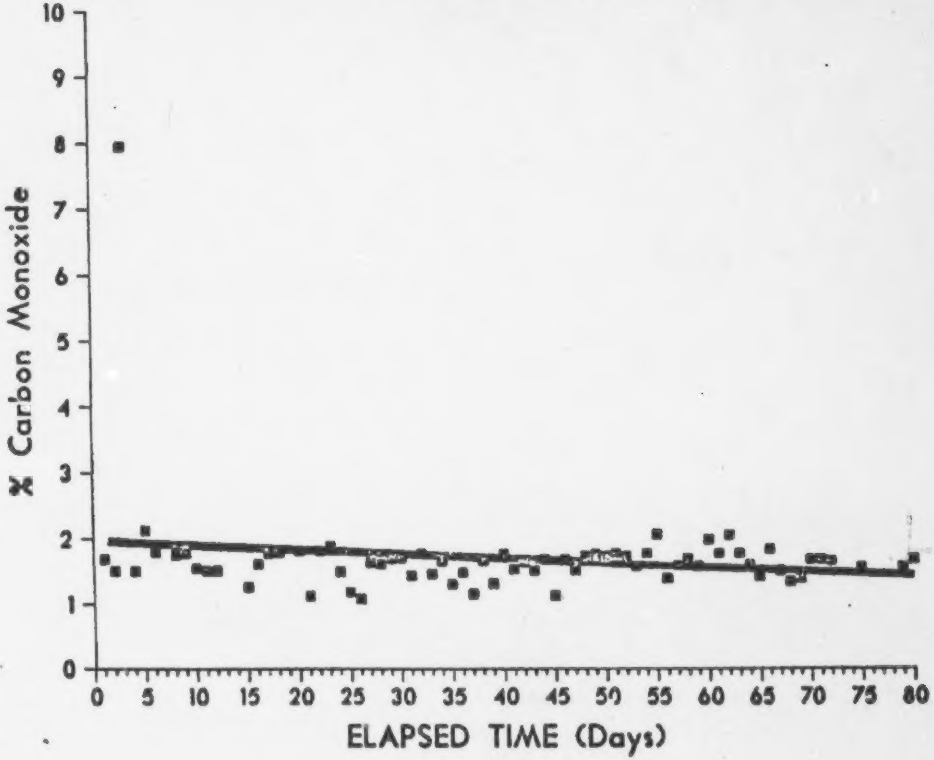
PLOT BH1 02

Oxygen Concentration in Beehive Mine
BOREHOLE #1



PLOT BH1CO

Carbon Monoxide Concentration in Beehive Mine
BOREHOLE #1



702 Castle Gate Road
Helper, Utah 84526
April 1, 1985

Martin G. Enterlin, Group Supervisor
Criminal Investigation Division
120 Church Street
New York, New York 10008

Dear Marty:

Since July, 1984 I have served as a Special Agent in the Criminal Investigation Division, Manhattan District in Group A-11 under your supervision. I have remained in a "Temporary" Full Time status, a unique condition for a former Special Agent.

In such a status, I have been ineligible for "Permanent" Full Time employee benefits such as Retirement, Health and Life Insurance benefits et al. Thus, I have not been fully compensated for my performance and work product. In addition to working in a Premium Pay status I have commuted over 160 miles travelling in excess of 4 hours every day.

These facts, together with the extreme economic and personal hardships of being separated from my family, maintaining two households, being precluded from "Permanent" status because of the current hiring freeze, thereby making it impossible to sell property in Utah and obtain housing in New York, have among other factors, lead me to conclude there is little hope of any significant improvement in the current situation.

Even though you and the highest levels of management of the Criminal Investigation Division in Manhattan have formally voiced a favorable opinion on reinstating my status to "Permanent", the situation has become far too taxing, untenable, unwise and impractical, if not totally impossible to endure.

Therefore, I respectfully submit my resignation effective May 10, 1985. This will allow the full use of my accumulated annual leave.

Please be assured however, I will continue to work diligently and effectively to achieve the assigned goal of obtaining an indictment on the cases reassigned to me upon the previous case agent's resignation.

I want to take this opportunity to thank you personally, Branch Chief Howard Mann; Assistant Division Chief, Gus Pangis and Chief, Criminal Investigation Division, Walter Margolies, for continued support and guidance during these past 10 months.

My association with the Division as a Special Agent throughout my career has been most memorable and enjoyable. Thank you again for your interest and support.

James J. Simonelli

Parties:

UTAH Power & Light (UP&L)
Emery Mining Corp. (EMC)
Public Service Comm. (PSC)
Division of Bus. Reg. (DBR)
United Mine Workers (UMWA)
KUTV (KUTV)
UTAH Shareholders Assoc. (USHU)
UTAH Attorney General (AG)
Committee of Consumer Services (CCS)
Cross Roads/UTAH Issues (CROSUES)
Depugh/DeBoer ISIS (ISIS)

April 84 Keith Chiarra
April 84 Wayne W. Wills
April-May 84 Rick Shankman
May 23-June 84 Committee Tns
July/Aug 84
Aug. 10, 1984 PSC Testimony
Aug 11, 1984 Heber Wells Per Pat Oshie To Assemble items
Aug 13 PSC-EMC Subpoena
Aug 14 Proposed Deposit
Aug 16-17 EMC Deposition
Aug 24-25 Deposit [illegible]
Aug 25 Subpoena
Aug 30 PSC Hearing
Aug 31 Comm Interrogat.
Sept 1 Deposit Sched
Sept 2-3 Deposit UP&L
Sept 4 AG Comm Motions
Sept 12 Sched [illegible] Discovery
Sept 5 p9
Sept 7
Oct 1
Jan 1448

Oct 21 Subpoena Hearing Testimony of D & A for Issues 5 & 6

J-841

Aug
10th PSC Testimony
11th Attempt To Assemble Documents From [illegible] Wells
13 Crossed by Forsgren, Rampton et al Further Testimony [illegible]
13 Subpoenaed by EMC Parson [illegible] & LaTimer
14 Scheduled Deposition Rescheduled
16 }
17 } EMC Depositions
18-19 Sched Depositions
24 }
25 } EMC Depositions
25 Subpoenaed For N.Y. Deposition From 9-1 through 9-4

30 PSC issues Stockman Subpoena Deposition and Hearing For 9-2 & 3
30 PSC Hearing issued
31 Committee [illegible] Answers To [illegible]
Sept
2 }
3 } Depositions
3 USHU wants To Take Depositions
4 AG Motion To Quash Subpoena [illegible] Simonelli
4 Comm. Motion To Quash Subpoena
4 KUTV Atty's Motion To Quash Subpoena of Stockman
4 Committee Moves For postponement of 9-12 hearing For need of [illegible]
5 PSC Establishes schedule Mandates 9-1 Committee Filing 10-1 Prefiling & Discovery Before [illegible]
7 PSC required More Definite Statement Due From Committee
11 EMC Advises Committee It would NOT Respond
12 Scheduled Discovery Findings hearing
26 EMC Filed Objection To More Definite Statement & Motion [illegible]

Oct
1 Committee Files Statement & Basis For Allegations w/PSC
1 AG Files Statement of Support

11 UP&L Files objections To Committee's 10-1 Filing
12 Utility Shareholders Assoc File Motion To Strike From Record
12 UP&L Files motion opposing AG motion To Intervene.
14 EMC memo To Strike Committee's pleadings
16 EMC Memo opposing Committee's efforts To Answer Questions
19 EMC Files Set of Interrogatories
19 AG Files motion that PSC direct UPL & Shareholders & EMC [illegible]
21 Committee objects Subpoenas requiring Testimony of D. Lloyd & [illegible]
21 week PSC Subpoena To Simonelli
Committee objects
A.G. objects

OcT
21 A.G. responds To Shareholders Request & invites counsel [illegible]
21 shareholders does not respond
21 Shareholders Demand Documents From Committee on (date) [illegible]
29 UP&L Files Motion To Quash
29 Committee obtains [illegible] as For Nov [illegible] 14-21, 26-30.

Nov
1 PSC issues subpoena For Simonelli Deposition in NY (Day by Day [illegible]
2 AG Motion [illegible] UP&L
5 Shareholders Motions AG To Disclose Confidential Criminal Documents
6 Division of Business Regulation First Request For [illegible] Documents
8 Committee AND The Division } File documents Asserting PSC Authority To [illegible] Coal Contracts

8 UMWA Motion To intervene
Committee [illegible]
AG. Motion To intervene
[illegible] have not [illegible] 10-1 - Filing
8 Cameron objects [illegible] does not speak
Deposition Appears Speaks [illegible]
16* AG responds [illegible] depositions
16 PSC Advises [illegible] permit [illegible] depositions
19-21 Scheduled Depositions cancelled
23 P&L Files its Answers and responses To PSC Interrogatories
Dated 21
26 Dated Sent Delivered on 27 Remaining Interrogatories & [illegible]

* Deseret Generation Action Before PSC

Dec.

19 Wilberg Mine Fire
20 PSC Dismissed

Am[illegible] Civil Liberties Union
632 [illegible]
8 East Broadway
Salt Lake City, Utah 84111
521-9289

January 16, 1985

Dear Member,

Some weeks ago the Affiliate accepted the case of James Simonelli, the man who is being sued for slander by Emery Mining for allegations he has made before the Public Service Commission and to the media about mismanagement by Emery Mining. Our ultimate interest in the case is to establish as a matter of law that persons offering testimony before the PSC enjoy complete immunity from prosecution based on the content of their testimony, and to thereby ensure the First Amendment rights of persons who may be critical of the operations of a public utility. If we are successful the public's interest in having issues relative to the cost of utility service publicly aired will also, of course, be protected.

As you may know the Public Service Commission issued, on December 20, an order dismissing the Simonelli case. It did so on the basis of a motion made by Utah Power & Light, the Utility Shareholders, and Emery Mining seeking dismissal on the grounds that the Consumer Committee had "failed to make out a prima facie case" regarding Simonelli's allegations. Though documentation and testimony corroborating Simonelli's allegations were available to the PSC, and the PSC knew this, no evidence was heard prior to the dismissal of the case.

The legal strategy which we will use in litigating the Simonelli case has not yet been finalized, but if we are successful in getting the court to dismiss the slander action on the grounds that speech before the Public Service Commission is constitutionally protected, and if the PSC's dismissal of the Simonelli case stands, there may never be a hearing on the charges that Simonelli has made about wrongdoing on the part of Emery Mining. We, along with other community groups, believe that the public has a right to have the charges raised by Simonelli evaluated by the Public Service Commission. Many of his charges deal with waste and mismanagement of resources leading to higher costs to ratepayers.

We are writing to ask you to write to and/or call Brent Cameron, chairperson of the Public Service Commission, and tell him that you want the PSC to reopen the Simonelli case and to hear and evaluate the charges made by Simonelli against Emery Mining. Tell him hat you want all available testimony and evidence to be heard.

You can write to Mr. Cameron at Heber Wells Building, 160 East 300 South, Salt Lake City, Utah 84111. His phone number is 530-6716.

Thank you.

Sincerely,

Shirley Pedler

Shirley Pedler
Executive Director

1896

THE ATTORNEY GENERAL
STATE OF UTAH
DAVID L. WILKINSON
ATTORNEY GENERAL

PAUL M. TINKER
DEPUTY ATTORNEY GENERAL
DALLIN W. JENSEN
Solicitor General
FRANKLYN B. MATHESON
Senior Assistant Attorney General
ROBERT R. WALLACE
Chief Trial Counsel

WILLIAM T. EVANS, Chief
Human Resources Division
DONALD S. COLEMAN, Chief
Physical Resources Division
STEPHEN G. SCHWENDIMAN, Chief
Tax & Business Regulation Division
EARL F. DORIUS, Chief
Governmental Affairs Division
PAUL M. WARNER, Chief
Litigation Division

December 4, 1984

Ms. Patti Hassler, Associate Producer
CBS News 60 Minutes
555 West 57th Street
New York, New York 10019

Re: James J. Simonelli matter

Dear Ms. Hassler:

Enclosed, as you requested in your telephone call to me, are copies of pleadings and testimony on file and a part of the public record in the James J. Simonelli matter, now pending before our Public Service Commission. Our office must charge 5¢ a page for these copies, or a total of $15.50.

I understand you are interested in the issue of public witnesses, as exemplified by Mr. Simonelli. Please understand that Mr. Simonelli's testimony occurs in a broader context of activities and proceedings, upon many of which our office cannot comment.

Our office became involved in this proceeding largely because we believe it is important to protect public witnesses, and to encourage those with information pertinent to public proceedings to come forward. We believe people like Mr. Simonelli perform a valuable role in society. As you have no doubt observed, however, there are two sides to every story, including this one.

This office neither encourages nor discourages your reporting on Mr. Simonelli. If you do become involved in his story, please consider all points of view. Fairness to all parties requires that opposing views and positions be aired along with Simonelli's.

Very truly yours,

Suzanne M Dallimore

SUZANNE M. DALLIMORE
Assistant Attorney General
Tax and Business Regulation Div.

SMD/cn

Encl.

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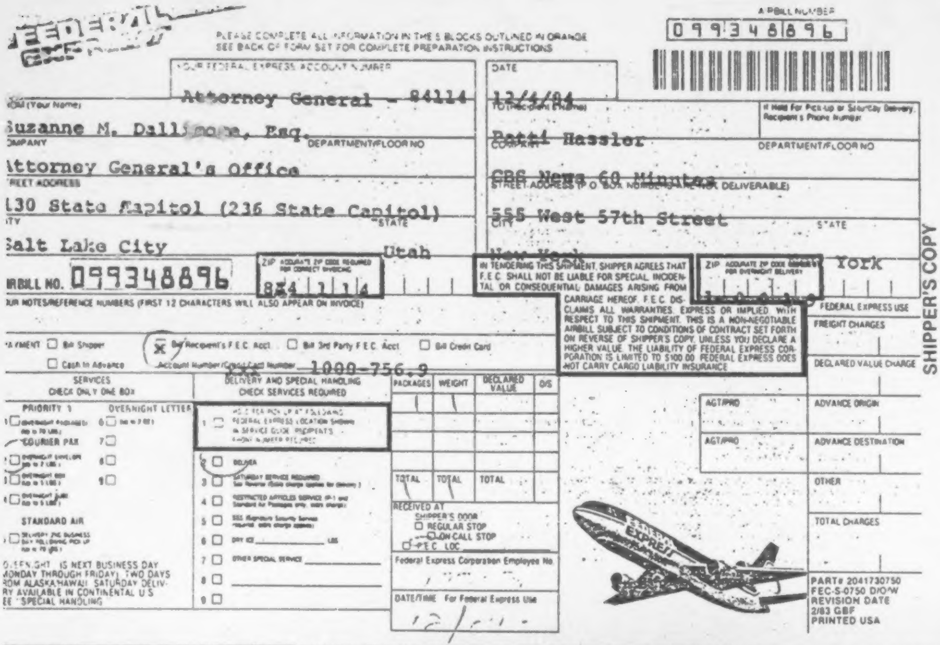

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Senator HATCH. We are now going to turn to our final two witnesses. They are union officials Joseph Main and Mike R. Dalpiaz. We are appreciative to have both of you gentlemen here. We look forward to taking your testimony.

I have to confess that I am about 40 minutes over and really behind in schedule. So we are going to try and get you through before we finish today. I think it is only fair to you.

So Mr. Main, are you the only one who is going to testify?

Mr. MAIN. Myself and Mr. Dalpiaz, yes.

Senator HATCH. Well, then, we will just turn the time over to you right now.

STATEMENT OF JOSEPH MAIN, SAFETY DIRECTOR, UNITED MINE WORKERS OF AMERICA, ACCOMPANIED BY MIKE R. DALPIAZ, PRESIDENT, DISTRICT 22, UMWA, PRICE, UT

Mr. MAIN. Mr. Chairman, I appreciate the opportunity to be here today, and I am going to be very brief, because of the five minutes, in which I think, is totally impossible to capsulize the tragedy.

Senator HATCH. Well, we will keep the record open, and we will take your full statement into the record regardless of length, okay?

Mr. MAIN. But it is terribly important that everybody understand why 27 miners lost their lives on December 19, 1984. And in my experience in investigating disasters and deaths in this industry, I have never seen such an unmitigated mess as I have seen in the Wilberg disaster.

Now, I start that off to qualify just basically what has happened over the last 2½ years. Two and a half years ago, 27 coal miners died in this country as the result of a failure of a operator to provide the health and safety protections that the law guaranteed to those coal miners.

That action was encompassed by the approval of the agency that is established to guard those operations to assure that they provide protections to the coal miners in this country.

We are frustrated. We are upset. I cannot fully express that in terms of what happened that led to this disaster and the agency's investigation of the aftermath.

There was a stripping away of protections for coal miners by a plan designed by the operator which first eliminated entries that would have provided escapeways, that would have required those escapeways to be ventilated by separate splits of air per se, by application of the law. Following that action, there was a plan design that eliminated the support systems in the bleeder system of that coal mine, which in essence did not provide for a bleeder system that would hold entries open through the total mining process.

What occurred was a deterioration of those entries to the point that on the night of December 19, 1984, they were not passable.

Regardless of what anybody wants to testify here, they were not passable only to those that had the foresight to spend—who knows—hours, trying to crawl through and weave through holes. Saying that those bleeder systems were open is the same as this building caving in and the participants in this room having to go and claw through the rubble to get out of it. That was the so-called escapeway off the bleeder systems of that coal mine. The Sixth

Right return—well, after the plan was designed to strip away those kinds of protections, this escape route, the Sixth Right return caved in. Lo and behold, this system was squeezed down to the point that there are very few avenues left off the section for those miners.

What action was taken? Well, the action that was undertaken was permitting the mining to continue, with the entries blocked off, not providing access to those miners off of that section. Is that right? Is that what the law says? No, that is not what the law says.

Did the law say that they had the ability to mine, putting the belt in the return air course of that coal mine? No, that is not what the law says. But that is the way the law was applied.

And Congressman Nielson, to respond to a question that you have addressed here repeatedly throughout the day, did those miners know about it, and what action did they take, and what did they do about it—I want to answer that.

First off, I would appreciate somebody showing me in the Mine Act where the coal miner has a right to issue action that shuts down a coal mine. Now, if you are willing to give us that today, I will concede that issue and agree with you on it.

Secondly, with the way that the system was operated in MSHA District 9, which our written testimony addresses requesting that an independent investigator be assigned to investigate District 9, and not only because of Wilberg—but because of plans approved that dealt with the Renal No. 2 Mine, and plans that were approved, where agency specialists said that they should never have been approved—that dealt with actions at the Eagle No. 5 Mine, where the MSHA District approved plans that we said should not have been approved—which in both of those cases later led to mining deaths, implicating the agency the same as Wilberg—with mining deaths after agency actions.

Now, we have got to bring some sensibility back to this system, and that sensibility that we bring back to the system is restoring some credibility and responsibility to the agency in MSHA District 9 to make darned sure there are people in that District that act responsible enough to enforce the law.

The agency's investigation of this matter took additional steps in the same direction. It is an agency that was self-investigating their previous actions. Testimony presented here on March 11 and 12, 1987, showed that this agency has created an atmosphere that does not permit the public laundering of their mistakes. That was testimony clearly presented those days.

And I think, Mr. Chairman, that we have a continuation of that when you fully examine what happened at Wilberg. And the three things that I pointed out as far as the reductions of protections it goes well beyond that. Our report will be released hopefully this week that outlines many, many more cases of where the agency, through its actions, eliminated the requirements of law, issued variances, issued waivers, not just verbal ones, but——

Senator HATCH. Mr. Main, I want you to document from the UMW standpoint as much of that as you can, because I intend to see that the agency does a good job from here on in. I thought they were doing a good job until this fire, and I can tell you one thing, that in some respects, they do. But as you and I both know, much of this criticism is very valid. Much that you have levied is very valid. And I would like you to get us as much information as you can, and we will try and help you; we will try and see that this agency does a better job.

Mr. MAIN. Mr. Chairman, we asked at the last hearing that a special prosecutor be established to look into the allegations that have been raised regarding the information on the oversight hearings of March 11 and 12. And I think once anyone with a reasonable purview takes a look at the report, once we have it finalized, and views the actions of the agency and adds those to the previous actions that have been addressed by MSHA District 9, there is no reason why any reasonable person would not include that a thorough investigation is totally merited and totally necessary of that sort in MSHA District 9.

Senator HATCH. All right. We have your point of view.

Mr. Main, is there any situation under any type of ground cover anywhere in which you consider two-entry mining safer than three-entry mining or multiple-entry mining?

Mr. MAIN. Mr. Chairman, I think first off, I am going to answer that in two parts. The better way to ask that question is this, and it was a question that the agency has refused to ask: Why are these mine operators not required to comply with the law in MSHA District 9, which would require additional entries? And in answering that, I think you come to the conclusion of the question that you are trying to get an answer to.

Senator HATCH. Yes. I would like to know that, because if it is safer under certain circumstances to have two-entry mining, which some have testified to, we sure do not want to toss is out because it may be safer under certain circumstances to have three-entry mining or multiple-entry mining.

So I want you to look at it, because you represent the workers, and I would like to have the very best we can for them. I am not an expert in coal mining, although I am getting there—and you people are. So just give us the best help you can, will you?

Mr. MAIN. In response, I think there is one thing that has been missed throughout the testimony today. One of the major problems that created an immediate death trap for those miners was the ventilation of the section with one split of air which, had two splits of air been provided, two separate splits of air, that there is an ability to step over one entry into the other. And that is the way most coal mines are set up in this country, to provide that kind of safeguard.

Senator HATCH. I would like you to answer—there were two letters to me, one from Plateau Mining, another from Robert Heers in Salt Lake. I would like you to analyze those letters and give me your best advice on those, will you? I think you have copies of those, and they make a case that two-entry mining may be safer under certain circumstances. I would like you to give me your viewpoint, is what I am saying. Will you do that for me—in writing? We will submit those to you, and I want your viewpoint in writing. Okay?

Mr. MAIN. Yes, I can do that.

[The letters referred to follow:]

PLATEAU MINING COMPANY
A Subsidiary of Cyprus Coal Company
P.O. Drawer PMC Price, Utah 84501
Telephone (801) 637-2875

John J. Spiecha
Vice President and
General Manager

March 9, 1987

U.S. Senator Orrin Hatch
United States Senate
Washington, D.C. 20510

RE: **Plateau Mining Company Experience**
With 2-Entry Longwall Development

Dear Senator Hatch:

The Labor Committee of the United States Senate will conduct oversight hearings of the Mine Safety and Health Administration (MSHA) starting March 9. During these hearings, it is anticipated that United Mine Workers of America (UMWA) will strongly indict MSHA for having granted several western underground coal producers including Plateau Mining Company a variance to permit longwall development using two entries. It is apparently UMWA's view and position that the safety of miners working on a longwall face with two-entry gateroad development is compromised due to less available escapeways.

The purpose of this correspondence is to refute the UMWA position based on Plateau's experience the last three years and to request your support for the continued sanctioning of two-entry longwall development as the only safe and economical method available for this purpose in areas of difficult geologic conditions and high stresses which exist under deep cover.

Plateau installed its first longwall in March, 1984. The initial tailgate was a four-entry gateroad; the headgate, three entries. A Petition for Modification was submitted in January, 1983, requesting a two-entry variance. This application was denied in November, 1983. Thus, the next two gateroads, 7th Left and 6th Left, were developed with three entries.

Several geotechnical studies were conducted during this period:

a) Longwall Feasibility, selection parameters by Mine Subsidence Engineering;

b) Uniform Bolting, a cooperative program sponsored by the Bureau of Mines, Brest Van Kempen, and Agapito and Associates;

c) Bleeder and Gateroad Crib Support, by Agapito and Associates.

Plateau had experienced previous difficulty in supporting the cap rock of the Wattis Seam, the upper mineable coal seam of the Blackhawk sequence. The mudstone above the Wattis Seam would fall above bolt anchorage horizons and, in particular, break out in locations where the presence of sandstone channels had differentially compacted the mudstone during litification.

During the retreat of the second longwall panel, it became evident that the standard entry bolting and cribbing were inadequate support mechanisms to maintain an open, walkable tailgate. The headgate entries also experienced a premature failure of mudstone cap rock in advance of the face. Plateau realized that, in order to successfully recover its mineable coal reserve in a safe and productive manner, modifications would have to be incorporated into the development and support plans.

The assemblage of problems that Plateau addressed through mining controls and geotechnical studies are as follows:

a) Gateroads - Sandstone channels in the roof concentrated abnormal high stresses on chain pillars and cap rock. Mudstone cap rock demonstrated a history of failure above the bolt anchorage and in locations where differentially compacted by sandstone channels. Cap rock broke out between bolts.

b) Tailgate Walkway Support - The supported entry, No. 3 of the original three-entry gateroad, was not walkable due to closure of the high density wood support:

   1) Total entry closure floor heave plus roof sag crushed out cribs;

   2) Floor heave pushed up into the walkway;

   3) The floor heave wave pushed out the bottom of the cribs into the walkway;

   4) Lateral pushes from rib sloughage pushed cribs into the walkway;

   5) The mudstone cap rock cantilevered down on the panel side and, at times, moved laterally toward the panel side;

   6) Pillars punched the top, creating long "rib cutters." High fractures were generated over the solid block which made it treacherous to hold the tailgate and advance shields of the next face.

c) Multi-Seam Mining - One of the paramount concerns that resulted in Plateau exploring the two-entry/yield pillar concept is the fact there are three seams to recover with thin interburden, on the order of 50 feet. For safe future mining, we could not afford to accentuate existing problems or concentrate high stresses on the seams below.

Plateau Mining Company immediately initiated addressing the gateroad support problems within the parameters of the three-entry system. Plateau mined the bottom coal of the third entry of 6th Left No. 3, future tailgate.

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Various bolting systems were utilized -- trusses, tensionable high strength rebar, angled bolts over the solid block, and wire mesh. Numerous patterns and dimensions of crib support were installed at varying distances from entry centerline. As an example, the most successful crib, an eight foot square unit with center support, allowed no room for a walkway due to the degree of rib sloughage.

Plateau submitted a Petition for Modification on June 13, 1985, and Interim Relief application from enforcement of 30 C.F.R., Art. 75.326. The primary objective of Plateau's pursual of a two-entry modification was to provide for compliance with existing regulations and to contribute to the safe recovery of coal reserves through a comprehensive ground control program. Specifically, the two-entry yield pillar proposal addressed the following:

a) Reduction in the adverse influence of floor heave;

b) Transfer of high stresses to the solid block as opposed to the headgate chain pillars;

c) Reduce loading on chain pillars, reduce the amount of total entry closure;

d) Reduce the magnitude of residual stresses imposed on lower seams to be mined in the future;

e) Reduce the length, zone of influence, of the stress zone imposed on lower seams.

Plateau contracted with J.F.T. Agapito & Associates, Inc., Consulting Geotechnical and Mining Engineers, to conduct a study of the "Stability Evaluation of Longwall Gate Roads Using Two- and Three-Entry Systems." Studies were conducted where comparisons were made of various sizes of chain pillars in a three-entry system to that of a two-entry gateroad utilizing yielding pillars. Closure indices were used to demonstrate the various three-entry configurations versus the two-entry proposal. The summary of findings are noted in attached correspondence dated February 25, 1987, from Mr. Hamid N. Maleki of Agapito & Associates to Mr. Bob Lauman of Plateau.

The results of a cooperative research project being conducted by the Bureau of Mines Denver Research Center and Plateau to compare and evaluate the geotechnical/mine design aspects of developing two- versus three-entry longwall mining systems in operations under deep cover is summarized in attached correspondence dated February 25, 1987, from Mr. Nicholas P. Kripakov of the Bureau of Mines Ground Control Division to Mr. Robert Lauman of Plateau. The summary states that it appears that:

a) Less overall weight is being supported by the two-entry system versus the three-entry system; and

b) The two-entry chain pillar is experiencing very little overall pressure change as longwall panel No. 4 is mined by, with significant lateral load transfer occurring over onto the next panel (LW5).

c) These observations in the data, together with an evaluation of the available convergence information, suggest that from a ground control aspect, at this stage of mining in Starpoint No. 2 Mine, the two-entry system is performing at least as well and most likely better than the three-entry system used previously.

Plateau has been pleased with the initial performance of the two-entry development. Operationally, the first two-entry gateroad, 5th Left, has allowed Plateau to develop through some very difficult geologic conditions and successfully retreat Panel LW004. Overall gateroad conditions have improved, the stresses have reduced in the roof over the gateroad, and yield pillars are stable and not concentrating load. In the two-entry Petition for Modification, Plateau cited statistics of roof fall monitoring. Previously, Plateau had recorded 37 linear feet of roof fall per 100 feet of four-entry section advance and 18 feet of roof fall per 100 feet of three-entry section advance. At that time, Plateau experienced zero roof falls in two-entry development starting rooms. To date, we have experienced three roof falls in the two-entry gateroad sections, or an equivalent of 0.007 feet per 100 feet of section advance. The data in the following comparison of roof fall statistics for two, three, and four entry longwall development is conclusive evidence that two-entry development is indeed safer for the difficult geologic conditions that exist under deep cover at Plateau and other mines in the western United States:

Number of Entries	Feet of Section Advance	Linear Feet of Unintentional Roof Falls	Ratio of Falls Per 100 Ft. of Advance
4 and 5	6,250	1,950	31.2
3	19,560	2,880	14.7
2	11,350	65	0.57

The conclusions of the various studies resulted in our understanding that the application of any one technique would not of itself resolve problems that we experienced. Techniques of mine planning and support not only had to contribute to safe recovery of the top seam, but the underlying seams to be mined in the future. A successful ground control program must include the composite application of geologic problem identification followed by the installation of adequate primary and secondary support in conjunction with two-entry gateroad development with non-stress concentrating yielding pillars.

Plateau has invested considerable time, effort, and capital to investigate and develop the safest method and system to develop longwall gateroads in difficult geologic conditions under deep cover. We feel that our experience as well as results of studies noted previously are conclusive proof that two-entry development is a safe and proven method. At Plateau, we are proud of our safety performance and are committed to safe production at any cost.

If copies of the investigative study reports and data supporting our position would be of help to you, or if a visit to our operation by you or one of your assistants would help in your understanding of this matter, please let me know. Your support of Plateau's position on two-entry development would be greatly appreciated.

Sincerely,

John J. Spiecha/kam

John J. Spiecha
Vice President and General Manager

JJS/kam

Attachments

cc: Don Brown
Rep. Mike Dmitrich
Senator Omar Bunnell
R. G. Lauman
W. E. Snyder
E. A. Shaw
Brett Harvey, Utah Power & Light
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GRAND JUNCTION, COLORADO 81506

87-27-4

February 25, 1987

Mr. Bob Lauman
Chief Engineer
Plateau Mining Company
P. O. Box PMC
Price, UT 84501

Re: Stability Evaluation of Longwall Gate Roads Using Two- and Three-Entry Systems at Plateau Mining Company

Dear Mr. Lauman:

Our preliminary evaluation of geotechnical data from the Fifth and Sixth Left entries, using two- and three-entry systems, indicates that a two-entry system provides better stability for two-seam mining at Plateau Mining Company. Improvements in roof stability are due to:

- Reduction of ground exposure by 43 percent. Such reduced exposure has significantly reduced roof falls for the relatively weak mudstones of the Wattis Seam in the two-entry system.
- Reduction of roof sag by up to 35 percent, during the development, due to the narrow width of gates for a two-entry system.
- Reduction of roof stresses by up to 83 percent, due to use of yield pillars.
- Improvements in roof stability in mining the lower seam by minimizing load transfer through remnant chain pillars of the Wattis seam to the workings below.

Please call us if you have any questions regarding this report.

Sincerely,

Hamid Maleki

Hamid N. Maleki
Associate

HNM/kly

Enclosure

United States Department of the Interior
BUREAU OF MINES
P. O. BOX 25086
BUILDING 20, DENVER FEDERAL CENTER
DENVER, COLORADO 80225

Denver Research Center

February 25, 1987

Mr. Robert Lauman
Chief Engineer
Plateau Mining Company
Starpoint No. 2 Mine
P. O. Box PMC
Price, UT 84501

Dear Mr. Lauman:

The purpose of this letter is to brief you on our progress with ongoing analysis of data obtained from rock mechanics instrumentation installed and being monitored by Denver Research Center, Bureau of Mines ground control research personnel in Plateau Mining Company's (PMC) Starpoint No. 2 Mine. This work is part of a cooperative research project being conducted by the Bureau and PMC to compare and evaluate the geomechanical/mine design aspects of developing two-versus three-entry longwall mining systems in operations exploiting United States coal reserves under deep cover. The basis for comparison of two-versus three-entry systems will result from a comprehensive evaluation of three criteria: field measurements, numerical model analysis, and actual observations of ground response during retreat mining of adjacent longwall panels.

The rock mechanics instrumentation includes a comprehensive package of borehole pressure cells (BPC's) and convergence stations installed in the chain pillars, panel, and entries at one site in the 6th Left three-entry system, and at two sites in the 5th Left two-entry system separating longwall panels No. 3 and No. 4 respectively. Monitoring of the BPC's gives an indication of pressure changes occurring in each respective entry system during the mining cycle. Monitoring the BPC's also gives an indication of the timing and degree of lateral load transfer across each chain pillar system onto the next longwall panel as the first panel is mined. The convergence stations are installed in the tailgate entries of both respective systems to monitor roof-to-floor convergence.

Preliminary analysis of the data covers the period from November 1985 to December 1986 and includes the mining of longwall panel No. 3 and longwall panel No. 4. An evaluation of the pressure cell data indicates that, up to the point where longwall panel No. 3 passed outby the instrumented site in the 6th Left three-entry gateroad, the peak vertical pressures recorded in the chain pillars are on the order of two to five times higher than the peak vertical pressures recorded in the chain pillars at the two instrumented sites in the 5th Left two-entry gateroad at the time that longwall panel No. 4 passed outby.

Maximum convergence measured in the future tailgate entry of the two-entry system in 5th Left was approximately 5 1/2 inches at the time the face of longwall panel No. 4 passed outby the second instrumented site. In order to compare the value of convergence measured in 5th Left against the convergence measured in the 6th Left three-entry system, it was necessary to extrapolate available data because monitoring of convergence in 5th Left was initiated after some degree of closure had already occurred. Nevertheless, based on projections and engineering judgement, we estimated that a comparable value of convergence in 6th Left would have been greater than that measured in 5th Left at the time that longwall panel No. 3 passed outby the instrumented site had all of the data been available.

The Bureau's analysis at this time is by no means complete because it does not include data during the mining of longwall panel No. 5. However, based on the data evaluated up to the point where longwall panel No. 3 passed the 6th Left three-entry system and longwall panel No. 4 passed the 5th Left two-entry system, it appears that:

- less overall weight is being supported by the two-entry system versus the three-entry system; and
- the two-entry chain pillar is experiencing very little overall pressure change as longwall panel No. 4 is mined by, with significant lateral load transfer occurring over onto the next panel (LW5).

These observations in the data, together with an evaluation of the available convergence information, suggest that from a ground control aspect, at this stage of mining, in Starpoint No. 2 Mine, the two-entry system is performing at least as well as and most likely better than the three-entry system used previously in 6th Left. A final evaluation will be made after the mining of longwall panel No. 5 at which time the tailgate entry in 5th Left will experience its highest loading.

A complete status report is currently being prepared and will be forwarded to you in the near future. The report will include all of the field data collected, as well as a more detailed interpretation and analysis of the data. In addition, the results of computer model analysis will also be included.

Thank you for supporting the Bureau's research efforts. If you have any immediate questions or concerns, please feel free to contact me at (303) 236-0765.

Sincerely,

Nicholas P. Kripakov
Group Supervisor
Rock Mechanics Group
Ground Control Division
Denver Research Center

United Mine Workers of America

TELEPHONE
AREA CODE (202) 842-7200

UNITED MINE WORKERS' BUILDING
900 FIFTEENTH STREET, N. W.
Washington, D.C.
20005

May 20, 1987

The Honorable Orrin G. Hatch
135 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Hatch:

During the April 27, 1987 Senate Oversight Hearing on the Wilberg Mine Disaster, you provided me with two documents and requested my response to them. One was a letter from Robert Heers, a past official of Kaiser Coal Corporation, and the other was a letter from John Spiecha, Vice President and General Manager for Plateau Mining Company.

Mr. Heers letter responded to five questions regarding longwall mining that Jim Phillips of your staff had asked. Those questions dealt with maintaining the tailgate of longwalls in travelable conditions; what should be done if the tailgate becomes closed due to the lack of adequate roof support; the use of bleeder entries for travelable escapeways; more training on self contained self rescuers (SCSR); and the use of aluminum material for ventilation structures. The following is my response to those issues.

Mr. Heers cited that it is imperative that tailgate entries be maintained as an escape route to protect miners. He stated that, "If only one thing could be learned from the Wilberg Disaster, it is that the tailgate of a longwall be maintained in a travelable condition leading to the main escapeways out of the mine." We concur with his position on this matter. MSHA experts and industry officials have also concurred with this. The need to keep the tailgates open is not limited to the two-entry longwalls under debate, but to all longwalls. Mr. Heers stated that in the event the entry becomes closed as a result of inadequate roof support, production on the longwall should be halted until the tailgate is restored and travelable. He also stated that methods were available to restore tailgates. I concur with these findings. I also believe, as does Mr. Heers, that bleeders should be designed and maintained to permit safe passages and used as an additional escape alternative for miners.

I agree with Mr. Heers that it is important to improve SCSR training. This was addressed in a letter the UMWA forwarded to the Assistant Secretary of Labor, immediately following the Wilberg Mine Disaster. It outlined problems we believed miners encountered during the disaster. Mr. Heers also noted two additional issues while addressing the SCSR's. One was the need to improve training for miners on barricading. The second was the use of emergency chambers, which MSHA does not require. I agree that both of these issues should be addressed.

As Mr. Heers pointed out, aluminum materials should not be used for ventilation structures, such as stoppings and overcasts because of its low melting point. Concrete blocks and reinforced concrete material have been proven to be fire resistant and should be utilized for ventilation structures.

Mr. Heers also commented on the Wilberg Mine Disaster and the use of two-entry mining systems. He stated that it was an illusion to suggest that additional entries would prevent such disasters and used the short distance of the 3rd entry connected to the 5th Right Section as an example. I disagree with Mr. Heers theory and will explain why. If the Wilberg Mine used three entries that were properly ventilated with at least two splits of air, with the proper stoppings separating the entries, the miners could have safely escaped. If the fire was in the intake entry, they could have simply stepped into the belt entry, which would have been free of smoke and fire, and walked off the section, or vice versa. This type of ventilation and entry system is used in many mines in this country. Secondly additional entries would have been available, on the tailgate side of the longwall, as an escape route. Instead of having only one tailgate entry left to rely on during retreat of the longwall, there would have been at least two. During retreat mining the entry adjacent to the mined cut longwall panel caves in from the pressure, which reduces three entry systems to two or two to one, etc.

Between 1981 and 1985 over 450 coal mine fires were reported and many more have occurred during that period, which were not reported. A likely reason more miners were not killed in those fires is the increased escape and ventilation protections, which are absent in two-entry mining systems. Miners with the protections afforded by additional entries could simply step into an adjacent entry separately ventilated and walk out of the area, escaping the fire and deadly smoke.

Mr. Heers also stated that there are four ways to escape off a longwall at mines using two-entry mining systems. This is not the case while developing the entries. With two-entry systems there are only two entries during the development and they are ventilated with one split of air. Smoke from a fire on the intake entry would travel up the intake and back out on the return (belt) entry, thereby limiting escape alternatives. That is one reason why this system is so hazardous for miners, as the Wilberg disaster clearly pointed out.

The lesson learned at Wilberg went further than showing the need to maintain an open escape route on the tailgate side. Wilberg also taught us that the two primary escapeways must be ventilated by at least two separate splits of air.

At the Wilberg Mine, the distance the miners had to travel from the headgate to the mouth of the section was only approximately 2,100 feet. According to testimony from officials of Utah Power & Light during the April 27, 1987 hearing, longwall panels are being developed nearly five times that distance. Miners working on two-entry mining systems would have to travel nearly two miles. If a fire struck on the intake, they would have to race ahead of the smoke from a fire on the same split of air and hope that a prompt warning is given and nothing impedes travel to allow them to escape. Mr. Heers letter assumed that methods to control the overburden and roof conditions to allow mining with more than two entries are non-existent. I believe that miners must have at least two separate splits of air ventilating the primary escape routes in order to be protected and that ground and roof control methods exist to address these problems, as opposed to bending the law and reducing the number of entries which increases the risk to miners' lives.

The second document you requested that I respond to was a letter dated March 9, 1987 from Plateau Mining Company. In the letter Mr. Spiecha provides a comparison of two-entry mining system to multiple entry systems, where more than two entries are used. The comparison was based on a limited use of a two-entry mining system at a Plateau Mine.

To fully assess the company's contention, it would be necessary to evaluate the conditions at the mine, as well as the mining map, and roof and ground control measures that have been employed. This mine is not represented by the UMWA, therefore we do not have access to that information. If you could arrange for our representatives to have access to that information and access to the mine to evaluate and review the conditions addressed, I could provide you with a specific response.

If the mine was not effectively designed to accommodate the control of ground or roof conditions, regardless of the number of entries, problems will be created. The pillar size, strength and location, proper location of panels and crosscuts and a variety of other ground control methods must be reviewed. To that extent they may, in this case, be comparing apples to oranges.

On April 23, 1987, I sent a letter to Alan McMillan, and forwarded a copy to your office. That letter identified the fundamental problem with two-entry mining systems. MSHA granted mine operators relief of the Mine Act by allowing them to place belts in return entries, thus allowing mine operators to reduce the number of entries to two during development, alleging roof and ground conditions as the reason. MSHA granted these requests without determining why those operators could not employ the necessary roof and ground control measures to control the alleged conditions. The Two-Entry Task Force, assigned by the Agency in early 1985 to evaluate this type of mining system, also sidestepped this most important question. We believe MSHA has a responsibility to determine why those operators, seeking to waive the law, can not comply with it, particularly when non-compliance has such devastating effects as was shown at the Wilberg Mine. Coal miners deserve an answer to this question. The Agency's failure to carry out this responsibility has created many of the current disputes on two-entry mining systems. I have been pushing MSHA to determine why those operators in question are not complying with the law. This needs to be done to fully address this problem and I am seeking your assistance on this matter.

Hopefully I have satisfactorily responded to the issues you raised, and I am looking forward to your response to the issues I have raised.

Sincerely,

Joe Main

Joe Main, Administrator
Department of Occupational
Health and Safety

cc: Senator Edward Kennedy
Representative Joseph Gaydos
Alan McMillan, Deputy Assistant Secretary

Page 1 of 7

R.G. HEERS
3423 Bruce Street
Salt Lake City, Utah 84124

801-272-3535
801-272-2390

April 24, 1987

Senator Orrin Hatch
United States Senate
Washington D.C. 20510

Dear Senator Hatch,

In response to Jim Phillips' request by telephone of April 21st that I address various questions regarding longwall mining techniques and MSHA regulations that have arisen as a result of the Wilberg coal mine disaster, I am submitting herewith my answers and comments.

Question Number 1: In the case of longwall coal mining, should the tailgate be maintained in a travelable condition?

Answer: If only one thing could be learned from the Wilberg disaster, it is that the tailgate of a longwall should be maintained in a travelable condition leading to the main escapeways out of the mine. The tailgate of a longwall is analogous to the fire escapes in a hotel. It provides a "back door" exit for the workers on the face in case the tunnels on the maingate side of the panel become obstructed by fire, cave-in, bounce, explosion or flood. As in hotels, where the safest location for the fire exit is at the end of the hall farthest from the main elevator and stairway core, so it is with longwall mining - the surest escape route is out the tailgate which is located on the side of the panel opposite the maingate. The maingate entries are used for the belt conveyor, vehicles, power lines, etc. For the most part, the tailgate is free from these sources of ignition or fire.

The tailgate of a longwall is usually in a zone of high abutment pressure or weak roof or both. The high ground pressures which are imposed on most tailgates should be anticipated and adequate roof support provided either while development is in progress or, at the latest, before the abutment pressures caused by retreat mining are imposed.

Question Number 2: If the tailgate becomes closed due to lack of adequate roof support, what should be done?

Answer: As far as production is concerned, the longwall operation should be shut down until the tailgate can be restored to a travelable condition. Restoration of a caved tailgate to a travelable condition can be accomplished by (a) establishing a crawlway or pathway over the top of the cave, (b) driving a new entry around the cave, or (c) tunnelling through the caved rock by forepoling, spiling, etc. (These are techniques designed for safe penetration of loose ground or caved material.) In tailgates under intense pressure or weak rock, close roof support is required to maintain a passable opening.

Question Number 3: Should bleeder entries be used and maintained in a travelable condition for escapeway purposes?

Answer: Bleeder entries, in general, should be used primarily as an alternate escape route from the working areas of the mine. The position of the bleeder entries on the opposite side of the worked out panels, far from the main entries, can provide a good alternate escape route if they are maintained in a safe, travelable condition. Because some coals in the United States are subject to spontaneous combustion, air should not be bled through the caved rock and coal in the worked out zone. To do so, only promotes spontaneous combustion fires. Just as the tailgate, when maintained, serves as a "back door" exit from the longwall face, the so-called bleeder entries can also provide another escape route from the longwall face. Being located on the opposite side of the mining block from the main entries, the bleeder is widely separated from all the activity on the mains and is inherently a safer escape route. (In the case of the Wilberg disaster, both of the secondary escape routes, the tailgate and the bleeder entry, were so badly blocked with caves as to be impassable or, in the case of the bleeder, so tightly congested that only one victim found his way through a small hole in the cave but not in time to survive.)

Question Number 4: Should MSHA and the coal industry see that more training in Self Contained Self Rescuers (SCSRs) is provided?

Answer: Yes. The evidence from the Wilberg fire indicates that some of the victims did not have adequate training in their use and especially, in their timely use; some did not allow enough time to get to their SCSRs. In addition, to save lives, there should be more training and practice in the industry in the use of barricading and refuge chambers. In the case of the Wilberg fire, all but one of the men working in the longwall section perished, even though most of them used SCSRs. This not only emphasizes the need for alternate escapeways but also points to the need for refuge chambers and more training in barricading procedures to provide same.

Question Number 5: Should the use of aluminum be allowed in the ventilation structures, such as stoppings and overcasts?

Answer: Aluminum weakens and melts at lower temperatures than steel. Thus, there are safety disadvantages to its use as was proven in the Wilberg fire. There, at an early stage in the fire, the aluminum overcasts failed, shortcircuiting the ventilation and increasing the supply of air to the fire. Very quickly the fire became a conflagration, generating massive volumes of smoke and spreading very rapidly. To be brought under control, mine fires must be starved of oxygen by sealing or otherwise reducing the air supply. The rapid spread of the fire and fumes into the adjacent entries (three and four in this area) blocked the escape route for all but one of the men who were trying to get out.

Moreover, there is little if any economy from the use of aluminum if it must be insulated to bring it up to tolerable safety standards. Masonry and concrete, reinforced with steel, have been proven by generations of miners to be safe, fire resistant materials in coal mines. While it would be possible to insulate aluminum overcasts, this brings up more regulatory problems as to suitable insulating materials, methods and performance. Better to just simplify this whole problem by abolishing the use of aluminum for this purpose and reverting to the use of masonry or concrete, reinforced with steel, the fire resistance of which has been proven by long experience.

Additional comments:

Concern has been expressed in some quarters as to the use of the two entry system and its adequacy in providing escape routes in longwall mining. It is an illusion to suggest that additional entries would prevent disasters of the Wilberg type. Although Wilberg was using the two entry system in developing longwall panels, the lack of a travelable tailgate and/or a travelable bleeder was the main cause of the loss of life.

The Fifth Right longwall panel was the scene of the Wilberg disaster. The fire broke out at the intersection of the Fifth Right panel and the main entries. The main entries were five in number. The Fifth Right panel was necked off with four entries for the first 100 feet and three entries for the next 200 feet. The remainder of the panel for approximately 2500 feet to the bleeder entry was developed by the two entry system. During the recovery work, nine of the victim's bodies were found in the three and four entry portion of the Fifth Right. The extra entries in this part of the panel did not help these men escape. However, an operable tailgate or bleeder escape route could have saved them.

In some conditions, particularly in heavy ground and/or bad roof, driving of additional entries over and above that needed for ventilation creates far more hazards than benefits to safety. In deep mines under strong layers of rock such as occur in many mining districts in the U.S., especially the West, the fewer entries used to develop the panel, the less will be the danger from squeeze, bounces and cave-ins. In deep cover, roof and rib fall accidents increase exponentially as additional entries are driven.

Falls of rock or coal from the roof or from the sides of the tunnel is the number one killer in coal mining. A recent five year study shows that, for a given quantity of coal mined underground in the U.S., the probability of being killed by a roof fall within 25 feet of the face, where most of such accidents do occur, is twelve times greater for continuous and conventional mining than for mining by longwall where the men are protected by shields. Therefore, after ventilation requirements are satisfied, the fewer entries the better.

With a two entry system serving a properly executed longwall mining operation, there are normally four (4) escape routes: the intake, the belt road, the tailgate and the bleeder. Only during the development period are the escape routes limited to two. Development of the panel accounts for typically only 6 to 8% of the total tonnage. Many safeguards are provided by mines using the two entry system so that the development is accomplished with far more safety than if 3 or 4 entries were used. The main gain in safety is derived from the reduction in bounces and roof falls and the increase in the proportion of coal mined by the inherently safer longwall method.

Yours truly,

R G Heers

R. G. Heers

RESUME OF ROBERT G. HEERS

Robert G. Heers, consultant to the mining industry, was born in Story City, Iowa, December 31, 1917. He received a B.S. degree in mining engineering from the University of California in 1940. After graduation, he worked first as assistant mine engineer, then as shift foreman with U.S. Steel Corporation at Columbia, Utah.

In 1943 he joined Kaiser Steel Corporation as mine engineer, and a few months later he became superintendent of the Sunnyside No. 2 Mine at Sunnyside, Utah; in 1945 he was appointed manager of the Sunnyside Mines. In 1953 he became manager of Mining and Raw Materials in which capacity he was also responsible for the Eagle Mountain iron ore mine. In 1967 Heers became vice president, Mining and Raw Materials, and in 1974 he was made vice president, Coal Operations. Heers joined Kaiser Resources Ltd. in February 1977 as vice president, New Project Development and retired from this position to engage in consulting engineering in February 1981.

Heers is a past director of Hamersley Iron in Australia, Kaiser Resources Ltd. in Canada, the American Iron Ore Association and the Bituminous Coal Operators Association. He belongs to the American Institute of Mining, Metallurgical and Petroleum Engineers (AIME) and the American Mining Congress. Heers was honored by the University of Utah when he was appointed to be an Adjunct Professor of Mining Engineering in March 1978, and he received an Honorary Degree from the College of Eastern Utah at Price, Utah in June 1978.

In February 1979 he received the Howard N. Eavenson Award from the Society of Mining Engineers of the AIME "for his outstanding contribution to the Coal Industry in providing leadership for pioneering many advances in mining technology and his innovative application of special equipment and methods to mine coal safely and efficiently under adverse mining conditions."

Heers has to his credit the following accomplishments in the field of coal mining:

> Kaiser Steel's first entry into the coal mining business was at Sunnyside, Utah, which was a very old property (now the oldest in the West and possibly in the United States). This old property, with its bad conditions of deep cover, long hauls, and high gas could only survive and prosper by virtue of a series of improvements. These included arching, backfilling, innovative ventilation systems, and longwall mining.

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Heers was instrumental in introducing longwall mining to the western United States in 1960 and in instigating a continuing series of improvements over the years to this system. This system of mining was adopted to cope with pressure and roof problems resulting from previous room and pillar mining in an upper seam. Improving methods for multi-seam and multi-lift mining has been a continuing special interest for him.

He originated, promoted and implemented the idea of using shield type longwall supports to enable mining of high coal under weak roof and heavy cover in U.S. mines.

He helped to develop and apply systems for rapid development of retreating longwall panels in heavy ground and/or weak roof. More recently, he has been involved in engineering an advancing longwall face using monolithic packwalls of limestone cement and CaCl2, transported and placed by pneumatic means.

In 1955 Kaiser Steel bought the largest privately owned coal property in the United States near Raton, New Mexico. The old coal mine located there was nearly closed down at the time but was revived under Heers' leadership to become one of the most efficient metallurgical coal mines in the United States.

The Hamersley Iron operation was the first super size iron ore mining, pelletizing and shipping project in Western Australia. Heers was the link between advanced American open pit mining technology and the Australian operators. This operation established many "firsts." For example, it probably operates the most efficient railroad in the world. Hamersley is now producing 37 million tons a year.

The five million tons per year coal mine at Sparwood, British Columbia, operated by Westar Mining Ltd. (formerly Kaiser Resources Ltd., then B.C. Coal Ltd.) of Canada, was the largest metallurgical coal mine to be opened possibly in the history of mining. This project was conceived by Heers, and he headed up the exploration, engineering planning, technical sales effort, construction and part of the initial operation. This operation pioneered many advances in mining technology, such as being the first to use: 200 ton off-highway trucks; 25 cu. yd. quarry shovels; large scale shovel-truck stripping of a coal deposit; unit train operation in Canada; and large scale bulk shipping port on the west coast of America.

> Heers was instrumental in bringing the hydraulic mining method to North America. This unique method of mining operated for about ten years with remarkable efficiency and safety in the Crows Nest Pass coal field in British Columbia, Canada where the coal is steeply pitched, thick and soft.

Through the years, Heers has assisted in the development and training of a number of the coal mining industry's present leaders.

Heers and his wife, Margaret, are the parents of four grown children. They reside in Salt Lake City, Utah.

* * *

Senator HATCH. That is all I need, that is all I need.

Now let me just ask Mr. Dalpiaz this. Are there instances, Mr. Dalpiaz, where you feel that two-entry mining can be safer than multiple-entry mining?

Mr. DALPIAZ. In certain circumstances, it is possible it could be. But you have to analyze all the scenarios before anybody can jump to a conclusion. All the scenarios have not been answered in any given mine that I am familiar with in Utah.

Senator HATCH. Well, you can see what I am driving at. I am trying to find out just what is best for the men and women out there in the mines, and I do not want to just have overglossed generalities make the determination for us. But I would like to at least know as much as I can.

Mr. Dalpiaz, we have been told that at least one Union member knew about the jerryrigging of the Wilberg compressor and that the Union did not report this alleged safety violation to MSHA. Do you consider that a significant oversight that the Union failed to make such a report, or was that just a mistake of, again, another one of the mistakes that was made here?

Mr. DALPIAZ. I will refer to Joe to answer that as far as the——

Mr. MAIN. Our investigation of that particular issue found this set of circumstances. A compressor was supposedly disabled, which was moved onto the Fourth Right section of the First North area of the mine sometime well prior to the mine fire. A decision was made, as we understand it, by company officials to place a compressor in operation. It did not operate properly. An electrician was called in, checked it out, found that an oil temperature switch was ineffective and tagged out the piece of equipment. He was then assigned by two company officials to put the machine back in service for a short period of time, to operate it for supposedly a short job, with a person supposedly assigned by the machine while it was being operated.

That machine was then taken out of service at the Fourth Right section of the mine; went to possibly other areas of the mine, and wound up sometime on the Fifth Right section of the mine.

The incident—when we questioned the electrician that was involved that was ordered to carry out the mission, his concerned was lessened over the jumpering out, which is something that we all have to be concerned about, to the extent that they have assigned somebody by the machine while it was in operation. However, that machine was apparently moved from that location and apparently operated at some point in time later, without such controls.

Hopefully, that has answered the question that you have raised.

Senator HATCH. Okay. Mr. Dalpiaz?

Mr. DALPIAZ. Also, further on that, on the jerryrigging or jumpering out, whatever you are referring to in the various comments, this happened again approximately one year or thereabouts after the Wilberg Mine fire, at the neighboring mine, or the Cottonwood Mine, of Wilberg, by the survivor of the Wilberg Mine disaster. It was detected by workers in the Cottonwood Mine, reported to—it happened to be the gentleman to my far left, Leonard Fleming, an international inspector who was in the Utah area—reported to Mr. Fleming. Mr. Fleming requested a 103(g)(1) inspection from MSHA the evening—it was a Friday evening—to go investigate this jerry-rigging as you are referring to it. MSHA did not come out on a Friday night. They said they could not come out on Friday night. They did not come out to inspect that until the following Monday. The same scenario.

Senator HATCH. You are not accusing Mr. Blake, are you?

Mr. DALPIAZ. No.

Senator HATCH. Okay. Because I would like to just point out that we invited Mr. Blake to come as the lone survivor but he did not wish to because he feels he has been through enough on this thing as it is. So we did not press him to come.

Mr. DALPIAZ. My point is, Senator, it happened again, and MSHA found it in their various infinite wisdom not to come and inspect it on a Friday night. I guess it was maybe too late; I do not know.

Senator HATCH. I got your point, Mr. Dalpiaz.

Mr. Main, what is your evaluation of Utah Power & Light Company's proposal to develop the entries into the next longwall mining panel before operations begin in that particular panel which they are then going to mine? This means, for instance, in terms of Wilberg, that the Fourth Right entries would have to be driven in before mining could begin in the Fifth Right, at least as I understand what they are saying.

Now, would this be a significant additional measure of safety?

Mr. MAIN. I am sorry, I have missed the point, Senator.

Senator HATCH. My point is you have heard Utah Power & Light describe how they are going to develop the entries of the next longwall mining panel—(conferring with staff)—well, my Counsel says next longwall panel in waiting. Do you agree with their approach?

Mr. MAIN. Okay. If you are talking about the presentation made—they had a map turned sideways, and from where I sat in the back, I would not view what——

Senator HATCH. Okay. Well, I will submit that in writing and then maybe you can answer it.

Mr. Dalpiaz, give us your recommendations what we can do to prevent another Wilberg Mine disaster as a Committee, what MSHA might be able to do, and companies that are operating—and the Union members. What can we all do to prevent this type of a disaster from ever happening again?

Mr. DALPIAZ. As was testified to earlier, Senator, there are several problems that exist, very, very serious problems within the various agencies in specifically Utah, MSHA being one, and I will get into another portion of the agency.

One, it is my firm belief that MSHA at the present time—Mr. Barton referred to about the variances, the verbal variances. I refer to them as secret meetings, verbal variances. That happens all the time. It is nothing new. We have had this situation not only at the Emery Mining Corporation, at the Kaiser Steel, at the U.S. fuel mines, et cetera, et cetera. That is not anything uncommon with MSHA.

It happened we had an identical situation, or almost identical, approximately one year ago at the Kaiser Steel mines, where the top end of the longwall caved; there were no other escape routes; verbal variance was granted through the Denver office.

Denver District 9 has to be cleaned from the top down. It is my firm belief of that. This scenario went on for so long, we are going to do what we want in District 9. I firmly believe that has to be cleaned up. And I stated further I wanted to elaborate further on the various agencies.

As you are very much aware, Senator—I believe you attempted to give some assistance—the State of Utah has recently within approximately the last month eliminated Utah State coal mining laws. All the laws now are adopted by reference to MSHA. And again it goes back to District 9.

Currently, District 9 and its current administration, I do not believe can enforce the existing law, let alone give them the Utah State law. We had various regulations in the State law that MSHA did not cover, and now those are just totally thrown out the window. What we are doing is lessening safety rather than encouraging safety.

And again, what we are doing is putting all this in the hands of District 9, and it is my firm belief that they will not and cannot do it at the present status.

And again, earlier, listening to the testimony about the variances, et cetera, I guess about all I can say is—and I refer to them as secret meetings—it is a farce, the testimony earlier. And I am not really calling anybody a liar, but if the shoe fits, wear it. That is about all I can say.

Senator HATCH. Thank you, Mr. Dalpiaz.

This is all the questions that I have——

Mr. MAIN. Mr. Chairman, if I may——

Senator HATCH. Yes, sir.

Mr. MAIN [continuing]. I have some recommendations that I would like to submit for the record.

Senator HATCH. Would you be kind enough to? We will keep the record open for you to submit whatever you can in writing to help us to know what to do better here, because we want to make sure this never happens again. And of course you guys are on the line every day, and you know what needs to be done. So give us as much help as you can.

[The prepared statement of Mr. Main, with attachments, follow:]

STATEMENT OF

JOSEPH A. MAIN

ADMINISTRATOR

DEPARTMENT OF OCCUPATIONAL HEALTH AND SAFETY

UNITED MINE WORKERS OF AMERICA

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES

U. S. SENATE

ON

OVERSIGHT OF THE

DECEMBER 19, 1984

EMERY MINING CORPORATION'S

WILBERG MINE FIRE

APRIL 27, 1987

ON DECEMBER 19, 1984, A COAL MINE DISASTER OCCURRED AT THE EMERY MINING CORPORATION'S WILBERG MINE IN ORANGEVILLE, UTAH. TWENTY-SEVEN PEOPLE PERISHED IN THAT DISASTER, THE WORST SINCE THE FINLEY MINE DISASTER OF 1970, WHICH CLAIMED 38 LIVES.

THE LOSS OF HUMAN LIFE, THE SUFFERING AND SORROW OF MINERS AND THEIR FAMILIES, THE PAIN LEFT IN THE AFTERMATH OF THE WILBERG TRAGEDY WAS NEEDLESS, SENSELESS, AND SHOULD HAVE BEEN PREVENTED. IT WAS NO ACT OF GOD. THIS TRAGEDY OCCURRED BECAUSE THE MINE OPERATOR NOT ONLY FAILED TO PROVIDE THE PROTECTIONS TO WHICH MINERS ARE ENTITLED, BUT TOOK ACTIONS TO REMOVE SUCH PROTECTIONS. NOT ONLY DID THE AGENCY CHARGED WITH ENFORCING THE LAW DO NOTHING TO STOP THESE ACTIONS, THEY AIDED THEM -- AND WITHOUT LEGAL AUTHORITY.

THE UNITED MINE WORKERS OF AMERICA CONDUCTED AN EXTENSIVE INVESTIGATION INTO THE CAUSE OF THE DEATH OF 27 PEOPLE AT WILBERG. THAT INVESTIGATION LASTED OVER TWO YEARS, AND DISCLOSED THE FOLLOWING:

1. THE COMPANY USED A MINING SYSTEM THAT HAD PEALED AWAY, LAYER BY LAYER, THE CRUCIAL ESCAPE, VENTILATION AND FIRE PROTECTIONS THAT MINERS WERE PROMISED BY CONGRESS THROUGH THE MINE HEALTH AND SAFETY ACT.

2. THE AGENCY CREATED BY CONGRESS TO PROTECT

MINERS NOT ONLY APPROVED THIS STRIPPED-DOWN PROTECTION SYSTEM, IT APPROVED COMPANY REQUESTS TO ALTER THE MINE LAW, THEREBY ELIMINATING MINERS' PROTECTIONS WITHOUT LEGAL AUTHORITY.

3. ON THE NIGHT OF DECEMBER 19, 1984, A FIRE STRUCK, AS THEY FAR TOO OFTEN DO IN THE MINING INDUSTRY. THE WILBERG MINE WAS NOT PREPARED TO PROTECT MINERS FROM FIRE ON THE INTAKE AIR COURSE OF THE SECTION IN WHICH THEY WERE WORKING.

AS A RESULT, 27 MINERS PERISHED WHEN DEADLY SMOKE POURED ON MINERS WHO HAD NO AVENUE FOR ESCAPE.

EVIDENCE DISCLOSED THAT MSHA DISTRICT 9 APPROVED A COMPANY PLAN TO MINE WITH ONLY TWO ENTRIES. SUCH A PLAN PERMITTED RETURN AIR TO BE USED TO VENTILATE THE BELT ENTRY. THIS ALSO SET UP SECTIONS TO BE VENTILATED WITH ONLY ONE SPLIT OF AIR, THUS ALLOWING ESCAPE ROUTES TO BE SUBJECT TO IMMEDIATE CONTAMINATION FROM DEADLY SMOKE FROM ANY FIRE ON THE INTAKE.

THE MINE LAW DID NOT PERMIT SUCH VENTILATION AT THE WILBERG MINE AND THE DISTRICT MANAGER DID NOT HAVE AUTHORITY TO WAIVE PROVISIONS OF THE LAW WHICH PROHIBITS SUCH VENTILATION METHODS. NONETHELESS, MSHA DISTRICT 9 WAIVED THE LAW.

THIS ACTION REDUCED THE NUMBER OF ESCAPE AVENUES AVAILABLE TO THE MINERS AND ESTABLISHED A DANGEROUS METHOD OF VENTILATION.

PRIOR TO THE FIRE OTHER MEANS OF ESCAPE WERE AVAILABLE TO THE MINERS, ONCE THE 5TH RIGHT SECTION WAS CONNECTED TO THE 6TH RIGHT RETURN AIR ENTRIES. HOWEVER, WHEN THE 6TH RIGHT RETURN ENTRIES OFF THE 6TH RIGHT SECTION BEGAN TO DETERIORATE, MSHA FAILED TO CITE THE CONDITIONS -- ALTHOUGH THEY OBSERVED THEM. WHEN THE 6TH RIGHT RETURN EVENTUALLY CAVED IN AND BECAME IMPASSABLE, MSHA APPROVED THE COMPANY'S VARIANCE REQUEST WAIVING THE COMPANY'S RESPONSIBILITY TO KEEP IT OPEN. THE LAW DID NOT GIVE THE DISTRICT MANAGER THE AUTHORITY TO WAIVE THE REQUIREMENT THAT THOSE RETURN AIR ENTRIES BE KEPT OPEN. NONETHELESS, THE MSHA DISTRICT MANAGER APPROVED THE REQUEST AND WAIVED THE LAW. THIS OBSTRUCTED ENTRY WOULD HAVE BEEN AN ADDITIONAL ESCAPE ROUTE AVAILABLE TO THE MINERS WHO DIED.

THE COMPANY SUBMITTED A PLAN FOR THE BLEEDER SYSTEMS FOR THE 5TH RIGHT SECTION TO MSHA. THAT MSHA APPROVED PLAN WAS NOT DESIGNED TO HOLD THE ENTRIES OPEN. THE ENTRIES EVENTUALLY BEGAN TO CAVE IN AND, ACCORDING TO COMPANY RECORDS, ONE END OF THE BLEEDERS FOR THE 5TH RIGHT SECTION WAS DANGERED-OFF BY A MINE EXAMINER ON NOVEMBER 13, 1984, OVER A MONTH PRIOR TO THE FIRE. THESE BLEEDERS WERE CONTINUED TO BE CITED ON EACH SUBSEQUENT WEEKLY INSPECTION UNTIL THE NIGHT OF THE DISASTER.

A SECOND EXAMINER FOUND UNSAFE CONDITIONS ON THE OPPOSITE END OF THE BLEEDER ENTRIES AND DANGERED THOSE OFF ON DECEMBER 3, 1984. THEY LIKEWISE WERE DANGERED-OFF ON EACH SUBSEQUENT WEEKLY EXAMINATION UNTIL THE DISASTER. COMPANY OFFICIALS SIGNED THE BOOKS LISTING THOSE EXAMINATIONS AND, ACCORDINGLY, WERE AWARE OF THE CONDITIONS. THE DETERIORATION OF THE ENTRIES IN THE INEFFECTIVE BLEEDER SYSTEMS, INITIALLY APPROVED BY THE AGENCY, WERE NOTED DURING INSPECTIONS THREE WEEKS PRIOR TO THE FIRE. ALTHOUGH THE AGENCY ISSUED A CITATION FOR THE BLEEDERS NOT BEING TRAVELLED, CONDITIONS WERE ALLOWED TO DETERIORATE, AND WITHIN FIVE DAYS WERE CLOSED OFF BY COMPANY-REQUIRED EXAMINATIONS. REPORTS ON THE BLEEDER CONDITIONS WERE LISTED IN THE COMPANY'S EXAMINATION BOOKS, WHICH THE AGENCY IS SUPPOSED TO REVIEW.

ALL THESE ACTIONS RESULTED IN ELIMINATION OF CRITICAL ESCAPE ROUTES FOR MINERS AND CAUSED THE MINERS TO BE TRAPPED.

THE INVESTIGATION OF THE WILBERG MINE DISASTER DISCLOSED SEVERAL FAILURES BY MSHA TO EFFECTIVELY ENFORCE THE MINE ACT. MSHA DISTRICT 9 WAIVED THE REQUIREMENTS OF THE LAW FOR FIRE PROTECTION REQUIREMENTS ON ELECTRICAL EQUIPMENT; ON ESCAPEWAY SIZES -- WHICH, IN ONE CASE, LEFT ONLY A SMALL HOLE FOR MINERS TO CRAWL THROUGH; AND ON UNNECESSARILY INCREASING THE LENGTH OF MINERS' ESCAPEWAYS BY OVER 2,100 FEET. ALTHOUGH MSHA ULTIMATELY ADMITTED THAT SOME

OF THESE ACTIONS BY DISTRICT 9 OFFICIALS WERE WRONG, THOSE DISTRICT 9 OFFICIALS WENT ON WITH BUSINESS AS USUAL. THIS IS NOT THE FIRST TIME ACTIONS BY MSHA DISTRICT 9 OFFICIALS HAVE BEEN IMPLICATED IN MINING DEATHS. TWO OTHER WELL KNOWN CASES ARE THE DEATHS AT THE RINEAU NO. 2 MINE IN 1981 AND AT EAGLE NO. 5 IN DECEMBER OF 1984. THOSE DEATHS OCCURRED WHEN PLANS WERE APPROVED -- OVER OBJECTIONS OF THE MINERS' REPRESENTATIVES AND/OR AGENCY SPECIALISTS -- THAT DID NOT PROTECT MINERS.

THE UMWA INVESTIGATION ALSO DISCLOSED THAT THE EMERY MINING CORPORATION HAD NOT SUBMITTED A PLAN TO MSHA, NOR DID MSHA REQUIRE ONE, ON FIRE-FIGHTING AND EMERGENCY EVACUATION PROCEDURES. THE FAILURE TO HAVE MINERS PREPARED FOR SUCH EMERGENCIES CONTRIBUTED TO THE SEVERITY OF THE DISASTER.

EVIDENCE ALSO DISCLOSED THAT THE FIRE-WARNING AND FIRE-FIGHTING SYSTEMS WERE EITHER DEFECTIVE OR WERE NOT DESIGNED TO ACTIVATE EFFECTIVELY. THIS ALSO CONTRIBUTED TO THE SEVERITY OF THE DISASTER.

EVIDENCE INDICATED THAT SOME OF THE MINERS MAY HAVE BEEN OVERCOME QUICKLY BY THE DEADLY SMOKE ON THE SECTION, WHILE OTHERS SURVIVED FOR SOME TIME, DESPERATELY ATTEMPTING TO ESCAPE. EVIDENCE INDICATED THAT ONE MINER SURVIVED FOR OVER FOUR HOURS.

FOLLOWING THE WILBERG DISASTER, MSHA BEGAN ITS INVES-

TIGATION. THAT INVESTIGATION WAS AS FLAWED AS THE AGENCY'S PREVIOUS ENFORCEMENT OF THE MINE ACT.

AS THE INVESTIGATION GOT UNDERWAY, THE AGENCY LIMITED ITS SCOPE BY NARROWLY FOCUSING ON THE CAUSE OF THE FIRE. BY SO DOING, MSHA SIDESTEPPED THE REAL CAUSE OF THE DEATH OF 27 MINERS, WHICH WAS THE MINING SYSTEM USED -- WITH MSHA APPROVAL BUT, IN PART, WITHOUT LEGAL AUTHORITY.

THE INVESTIGATION WAS CARRIED ON IN A MANNER THAT PREVENTED MSHA'S IMPROPRIETIES FROM BEING ADDRESSED. DESPITE THE UMWA'S WRITTEN AND VERBAL DEMANDS TO BRING THE RESPONSIBLE MSHA DISTRICT 9 MANAGER AND SUB-DISTRICT MANAGERS TO THE OFFICIAL HEARING FOR QUESTIONING, THE AGENCY REFUSED.

THESE AGENCY ACTIONS NOT ONLY PROTECTED MSHA OFFICIALS FROM SCRUTINY AND POSSIBLE DISCIPLINARY AND LEGAL ACTIONS, THEY ALSO PREVENTED PUBLIC EXAMINATION OF THE MINING SYSTEM USED AT THE WILBERG MINE, WHICH WOULD HAVE EXPOSED THE DEADLY HAZARDS THAT MINERS UNNECESSARILY FACED.

MSHA ALSO PERMITTED THE PUBLIC TO BE MISLED ON THE CAUSE OF THE DISASTER BY FAILING TO ADDRESS THE UNFOUNDED CLAIMS OF ARSON GENERATED BY A COMPANY OFFICIAL, THE SAME OFFICIAL THAT MADE FALSE CLAIMS THAT A SAFE AREA EXISTED TO WHICH THE TRAPPED MINERS COULD RETREAT.

MSHA'S HANDLING OF THE INVESTIGATION ALLOWED THE CONTINUATION OF THE DANGEROUS MINING SYSTEMS USED AT THE WIL-

BERG MINE. THE AGENCY, HOWEVER, DID ADDRESS THE TYPE OF MINING SYSTEMS USED AT WILBERG, SEPARATE FROM THE INVESTIGATION. IN JANUARY OF 1985, FOLLOWING CRITICISM FROM THE UMWA, MSHA CREATED A TASK FORCE TO LOOK AT TWO-ENTRY MINING SYSTEMS.

UNFORTUNATELY, THE TASK FORCE WAS NOT ASKED TO DETERMINE WHY OPERATORS USING THE TWO-ENTRY MINING SYSTEM COULD NOT COMPLY WITH THE LAW, WHICH REQUIRES ADDITIONAL ENTRIES AND, AS A RESULT, PROVIDES ADDITIONAL ESCAPE ROUTES AND SAFER VENTILATION METHODS. THE AGENCY INSTEAD ASKED THE TASK FORCE TO DETERMINE IF METHODS COULD BE ESTABLISHED THAT WOULD ALLOW THE CONTINUED USE OF THESE TWO-ENTRY SYSTEMS.

TO THIS DAY, THE AGENCY HAS REFUSED TO EXAMINE THE IMPORTANT QUESTION: WHY ARE THESE OPERATORS NOT REQUIRED TO COMPLY WITH THE MINE LAW?

BY LIMITING THE TASK FORCE'S ASSIGNMENT, MSHA RECEIVED THE ANSWER IT WANTED, ONE THAT ALLOWED CONTINUED APPROVAL OF TWO-ENTRY MINING SYSTEMS. PERHAPS WORSE, MSHA DID NOT EVEN FOLLOW THE TASK FORCE RECOMMENDATIONS IN APPROVING SUBSEQUENT MINING PLANS. THE TASK FORCE MADE 34 HEALTH AND SAFETY RECOMMENDATIONS FOR TWO-ENTRY SYSTEMS. SEVEN WERE INTENDED TO BE APPLIED IN EVERY CASE OF A TWO-ENTRY SYSTEM APPROVAL (SEE ATTACHMENT #1).

NOT ONLY DID THE AGENCY IGNORE MANY OF THE 34 RECOMMENDATIONS, IT DID NOT REQUIRE THOSE SEVEN CONSIDERED NECESSARY IN ANY OF THE PLANS APPROVED. IT IS IMPORTANT TO NOTE THAT THE TASK FORCE FOUND BY THEIR OWN ANALYSIS THAT THE SYSTEM USED AT THE WILBERG MINE WAS UNSAFE. IT IS ALSO IMPORTANT TO NOTE THAT THE SUPPOSED REASON FOR THE USE OF THE TWO-ENTRY MINING SYSTEM WAS FOR BETTER GROUND CONTROL. HOWEVER, SEVERAL MINES OPERATE IN THIS COUNTRY WITH HEAVY OVERBURDEN AND MINE WITH MULTIPLE ENTRIES. WE HAVE UNSUCCESSFULLY PRESSED THE AGENCY TO DETERMINE WHY GROUND CONTROL METHODS CANNOT BE UTILIZED TO CONTROL THE CONDITIONS CITED.

ALTHOUGH MSHA FINALLY ADMITTED, FOLLOWING THE DISASTER, THAT THE LAW DID NOT PERMIT THE COMPANY TO MINE WITH TWO-ENTRY DEVELOPMENT SYSTEMS AT THE WILBERG MINE, THE AGENCY RECENTLY PERMITTED UTAH POWER & LIGHT TO RESUME MINING THE 13TH RIGHT SECTION BY A TWO-ENTRY RETREAT SYSTEM, HOWEVER IN DOING SO, MSHA DID NOT EVEN APPLY THE RECOMMENDATIONS OF THE TASK FORCE. WORSE YET, THE AGENCY PERMITTED THE COMPANY TO CONTINUE USING BASICALLY THE SAME MINE VENTILATION PLAN IN USE AT THE TIME OF THE DISASTER. THE 13TH RIGHT SECTION IS VERY SIMILAR TO THE 5TH RIGHT SECTION. THIS SHOWS THAT THE AGENCY HAS NEITHER REALIZED WHY 27 MINERS WERE KILLED NOR TAKEN SERIOUSLY THE NEED TO ACT TO PREVENT REPETITION OF THE DISASTER.

I WOULD LIKE TO MENTION THAT CONDITIONS SIMILAR TO THOSE AT WILBERG WERE FOUND AT THE SUNNYSIDE MINE IN JULY OF 1986 -- THE TAILGATE ENTRIES BECAME BLOCKED. OVER OUR OBJECTIONS, MSHA LET THEM CONTINUE MINING. ALTHOUGH COMPANY REPRESENTATIVES HAD PREVIOUSLY SAID COAL SHOULD NOT AND WOULD NOT BE MINED IF THOSE ENTRIES BECAME BLOCKED, THEY CONTINUED TO MINE.

MINES USING TWO-ENTRY SYSTEMS ALSO USE DIESEL EQUIPMENT. DIESEL EQUIPMENT EMITS CARBON MONOXIDE THROUGH THE ENGINE EXHAUST. THE DIESEL EQUIPMENT THUS TRIGGERS THE ALARM SYSTEM, CONSTANTLY CAUSING FALSE FIRE ALARMS -- FALSE ALARMS THAT BECOME EXPECTED AND CAUSE NO REACTION. MSHA, IN ITS HASTE TO APPROVE THE TWO-ENTRY MINING SYSTEMS, APPROVED THIS FAULTY ALARM SYSTEM, AGAINST THE DICTATES OF COMMON SENSE. IN ANY EVENT, ALARM SYSTEMS DO NOT AND CANNOT REPLACE ESCAPE ROUTES. DESPITE COMPLAINTS FROM THE UMWA FOR OVER A YEAR, THE AGENCY REFUSED TO ADDRESS THIS PROBLEM UNTIL JUST DAYS BEFORE THE SCHEDULED SENATE HEARINGS ON THE WILBERG DISASTER.

FOLLOWING THE WILBERG MINE DISASTER, MSHA DISTRICT 9 MANAGER JOHN BARTON INFORMED SEVERAL COMPANIES THAT HE COULD NO LONGER APPROVE THEIR REQUESTS TO USE TWO-ENTRY MINING SYSTEMS BECAUSE THE LAW DID NOT PERMIT HIM TO GIVE SUCH APPROVAL. THE LAW DID NOT CHANGE, BARTON JUST STARTED OBEYING IT.

BARTON INSTRUCTED THE COMPANIES THAT THEY WOULD HAVE TO PETITION THROUGH 101(c) OF THE MINE ACT IF THEY WISHED TO USE A TWO-ENTRY SYSTEM. THIS ACTION RETURNED TO THE UNION THE RIGHT TO CHALLENGE SUCH SYSTEMS -- AS PROVIDED BY CONGRESS IN THE LAW. THE ADMINISTRATOR OF MSHA AND THE ASSISTANT SECRETARY, HOWEVER, SOON INVOKED A QUICKIE PROCESS TO ALLOW THE TWO-ENTRY APPROVAL WHICH CONSEQUENTLY RESTRICTED THE MINERS' REPRESENTATIVES' RIGHTS OF INTERVENTION. THAT ACTION IS NOW BEING CHALLENGED IN THE FEDERAL APPEALS COURT.

TWENTY-SEVEN MINERS DIED BECAUSE OF A MINING SYSTEM THAT WAS UNSAFE -- A MINING SYSTEM THAT MSHA COULD APPROVE ONLY BY BENDING AND TWISTING THE LAWS.

IT SEEMS THAT THE ACTIONS OF MSHA DISTRICT 9 OFFICIALS IN WEAKENING ENFORCEMENT OF THE MINE ACT AND ENDANGERING MINERS ARE THE SUBJECT OF SCRUTINY BY EVERYONE EXCEPT THE AGENCY.

CABLE NEWS NETWORK IN 1984, PRIOR TO THE WILBERG MINE DISASTER, TELEVISED A SERIES ON MSHA DISTRICT 9 ACTIVITY. THE PROGRAM FOCUSED ON THE DISTRICT MANAGER'S APPROVAL OF A ROOF CONTROL PLAN AT THE RINEAU NO. 2 MINE OVER THE OBJECTIONS OF MSHA INSPECTORS AND SPECIALISTS. TWO MINERS WERE KILLED AS A RESULT OF THE UNSAFE ROOF CONTROL PLAN APPROVED.

THE UMWA HAS, ON SEVERAL DIFFERENT OCCASIONS, CRITI-

CIZED THE MSHA DISTRICT 9 ACTIONS. OUR SEPTEMBER 25, 1986, TESTIMONY TO THIS COMMITTEE OUTLINED SOME OF THE PROBLEMS, INCLUDING THE APPROVAL OF AN INFERIOR ROOF CONTROL PLAN OVER OUR STRONG OBJECTIONS. THREE ROOF FALL FATALITIES CAN BE LINKED DIRECTLY TO THE APPROVAL OF INFERIOR ROOF CONTROL PLANS IN DISTRICT 9.

THE UMWA TESTIMONY PRESENTED AT THE MARCH 11 AND 12, 1987 HEARING IDENTIFIED FURTHER PROBLEMS IN MSHA DISTRICT 9, INCLUDING THEIR FAILURES TO EFFECTIVELY CARRY OUT SPECIAL INVESTIGATIONS TO BRING AN END TO THE SEVERELY DISPROPORTIONAL NUMBER OF DEATHS OCCURRING AT COAL MINES IN THAT DISTRICT IN RECENT YEARS.

OUR PREVIOUS TESTIMONY ALSO INCLUDED INFORMATION ON THE ISSUANCES OF VERBAL WAIVERS ALLOWING UTAH POWER AND LIGHT TO MINE USING A SINGLE ENTRY AT THE WILBERG MINE IN JANUARY OF THIS YEAR.

THE INVESTIGATION INTO THE WILBERG DISASTER PROVIDED EVIDENCE THAT MSHA DISTRICT 9 OFFICIALS ROUTINELY EXCEEDED THEIR AUTHORITY BY ISSUING WAIVERS OR VARIANCES OF THE MINE LAW OR UNNECESSARILY GRANTING OPERATORS RELIEF THAT DIMINISHED PROTECTION TO MINERS. THE AGENCY'S ACTIONS TO WAIVER THE REQUIREMENTS OF THE LAW WERE NOT LIMITED TO WILBERG. THEY WERE FOUND ELSEWHERE, INCLUDING MINES OPERATED BY THE KAISER COAL CORPORATION, MID-CONTINENT RESOURCES, AND UTAH

POWER AND LIGHT (EMERY MINING CORPORATION). AGENCY DOCUMENTS SENT TO THOSE COMPANIES AFTER THE WILBERG MINE DISASTER VERIFIED THESE FINDINGS.

OTHER ACTIONS INVOLVED MSHA OFFICIALS' REFUSALS TO MAKE TIMELY INSPECTIONS, TO INVESTIGATE SERIOUS MINE FIRES AND TO TAKE ENFORCEMENT ACTIONS TO PROTECT MINERS IN DANGEROUS CONDITIONS. WE ARE PROVIDING, SEPARATELY TO THIS COMMITTEE, DOCUMENTATION ON THOSE.

MSHA DISTRICT 9 LAST YEAR LED ALL DISTRICTS IN THE NUMBER OF FATAL ACCIDENTS, YET RANKED NINTH IN THE NUMBER OF MINES. IN THE LAST NINE YEARS, AT LEAST 128 COAL MINERS HAVE BEEN KILLED IN THAT MSHA DISTRICT (SEE ATTACHMENT #2).

A RECENT INDEPENDENT REPORT ON THE SAFETY RECORD OF THE 20 LARGEST U.S. COAL MINING COMPANIES, COVERING THE PERIOD 1981 - 1985, IDENTIFIED NEAL SAVAGE'S OPERATION OF EMERY AS HAVING THE WORST SAFETY RECORD IN FATAL, PERMANENT DISABILITY AND ALL DISABLING ACCIDENTS (SEE ATTACHMENT #3).

THAT REPORT REFLECTS THE EMERY MINING CORPORATION'S MINE SAFETY RECORD. THOSE MINES, TO OUR KNOWLEDGE, ARE ALL LOCATED IN MSHA DISTRICT 9 AND ARE UNDER THE JURISDICTION OF SUB-DISTRICT MANAGER LAMAR BISHOP.

IT WILL TAKE A THOROUGH INDEPENDENT INVESTIGATION OF MSHA DISTRICT 9 FROM TOP TO BOTTOM TO RESTORE CREDIBLE EN-

FORCEMENT OF THE MINE ACT IN THAT DISTRICT. THE ACTIONS IN THAT DISTRICT CAN NO LONGER BE IGNORED.

CONCLUSION

THE CAUSE OF THE DEATH OF 27 MINERS WAS MORE THAN A FIRE THAT SPARKED ON THE NIGHT OF DECEMBER 19, 1984. AS RECORDS AND REPORTS SHOW, MINE FIRES FAR TOO OFTEN OCCUR. FROM 1981 TO 1985, 456 FIRES OCCURRED IN THE MINING INDUSTRY THAT LASTED FOR MORE THAN 30 MINUTES OR CAUSED INJURY. 216 OF THOSE OCCURRED UNDERGROUND. IN ADDITION, IT IS LIKELY THAT HUNDREDS OF FIRES OCCURRED THAT WERE NOT REPORTED, SINCE MANY ARE NOT REQUIRED TO BE BY LAW.

FIRES MUST BE CONTROLLED BUT, JUST AS IMPORTANT, PROTECTIONS MUST BE IN PLACE TO PROTECT MINERS WHEN THEY DO OCCUR. THE WILBERG MINE WAS STRIPPED OF THOSE PROTECTIONS AND MINERS DIED.

THE OPERATOR OF THE WILBERG MINE REMOVED THOSE PROTECTIONS PIECE-BY-PIECE. THE AGENCY CHARGED WITH THE RESPONSIBILITY OF ENFORCING THE MINE LAWS TO SEE THAT MINERS ARE PROTECTED, AIDED THE COMPANY BY ISSUING WAIVERS AND VARIANCES, AT TIMES EXCEEDING THEIR LEGAL AUTHORITY, AND ELIMINATION OF MINERS' RIGHT OF LEGAL CHALLENGE. BOTH FAILED TO TAKE ACTIONS NECESSARY TO PROTECT THE MINERS.

MSHA, IN CARRYING OUT ITS OBLIGATION TO INVESTIGATE THIS TRAGEDY, FAILED TO DO SO PROPERLY. MSHA WAS DEEPLY

IMPLICATED IN THE CAUSE OF THE DISASTER. AN EXAMINATION OF THE MINING SYSTEM IDENTIFIED SERIOUS UNSAFE CONDITIONS TO WHICH MINERS WERE EXPOSED THAT THE AGENCY FAILED TO CORRECT, DID NOT CONFRONT IN ITS INVESTIGATION, AND CONTINUES TO IGNORE IN ITS HANDLING OF THE TWO-ENTRY SYSTEM ISSUE.

THE TWO-ENTRY SYSTEM EXPOSES MINERS TO SERIOUS HAZARDS. TO PREVENT FUTURE TRAGEDIES, MSHA MUST BE DIRECTED TO DETERMINE -- IMMEDIATELY -- WHY OPERATORS USING TWO-ENTRY SYSTEMS ARE NOT COMPLYING WITH THE MINE ACT AND PROVIDE INCREASED VENTILATION, FIRE AND ESCAPE PROTECTIONS.

THE SECRETARY OF LABOR MUST REQUIRE MINE OPERATORS TO PROVIDE TWO SEPARATE AND DISTINCT ESCAPEWAYS VENTILATED BY SEPARATE SPLITS OF INTAKE AIR TO PROVIDE SAFE ESCAPE ALTERNATIVES. THE SECRETARY MUST REQUIRE MINE OPERATORS AT LONGWALL MINES TO KEEP A TAILGATE ENTRY OPEN FOR ESCAPE PURPOSES AT ALL TIMES. EVEN THOUGH THE LAW CURRENTLY REQUIRES SUCH ACTION, THE AGENCY IS NOT ENFORCING IT. THE SECRETARY MUST ALSO REQUIRE THE MINE OPERATOR TO INSTALL, IN ADVANCE, THE NECESSARY SUPPORT SYSTEM TO HOLD TAILGATE ENTRIES TO PREVENT THEM FROM CAVING IN AND, ADDITIONALLY, REQUIRE BLEEDER SYSTEMS TO BE DESIGNED TO HOLD DURING THE MINING PROCESS. EFFECTIVE METHANE AND CARBON MONOXIDE DETECTION AND WARNING DEVICES NEED TO BE LOCATED IN BOTH INTAKE AND RETURN ENTRIES AS ADDITIONS TO THE CURRENT PRO-

TECTIONS, AS OPPOSED TO REPLACEMENTS FOR THEM. IMPROVEMENTS IN FIRE PROTECTION, FIRE-FIGHTING, AND TRAINING OF MINERS ARE ALSO NEEDED.

THE SECRETARY'S TASK FORCE REPORT MUST ALSO BE APPLIED AS A SUPPLEMENT TO THE PROTECTIONS THE MINE ACT NOW PROVIDES, AS OPPOSED TO A SUBSTITUTION FOR THOSE PROTECTIONS.

A SPECIAL INDEPENDENT INVESTIGATION OF MSHA DISTRICT 9 MUST BE INSTITUTED IMMEDIATELY TO ADDRESS THE IMPROPER ACTIONS OF MSHA AGENCY OFFICIALS, INVOLVING BOTH THE WILBERG MINE DISASTER AND THE ACTIONS AT OTHER MINES. THAT MSHA DISTRICT MUST BE CLEANED UP AND RESPONSIBLE INDIVIDUALS PLACED IN THE POSTS THAT ARE CRUCIAL TO THE PROTECTION OF MINERS' HEALTH AND SAFETY. THE AGENCY MUST ALSO ESTABLISH EFFECTIVE REVIEW PROCEDURES TO MONITOR THE ACTIONS OF MSHA DISTRICTS TO ASSURE THAT THEY ARE CONSISTENT WITH THE MINE ACT AND DESIGNED TO PROVIDE PROTECTIONS TO MINERS.

CHANGES MUST ALSO BE MADE IN THE INVESTIGATION PROCESS TO ASSURE THAT CREDIBLE INVESTIGATIONS ARE CONDUCTED, INVESTIGATIONS THAT ADDRESS ALL THE FACTORS, INCLUDING THE AGENCY'S ROLE. SUCH INVESTIGATIONS MUST BE ACCOMPANIED, FROM THE OUTSET, BY SPECIAL INVESTIGATORS WHO EXAMINE THE EVIDENCE AND INFORMATION TO DETERMINE WHETHER WILLFUL VIOLATIONS OF THE MINE ACT WERE COMMITTED. THIS MUST NOT BE DELAYED OVER TWO YEARS, AS IT WAS IN THIS CASE.

IN THIS CASE, A THOROUGH SPECIAL INVESTIGATION MUST BE MADE AND THOSE RESPONSIBLE FOR THE DECEMBER 19, 1984 TRAGEDY MUST BE BROUGHT TO JUSTICE.

THE UMWA'S INVESTIGATION REPORT PROVIDES MUCH MORE DETAIL, WITH ADDITIONAL FINDINGS AND RECOMMENDATIONS THAT WILL BE SUBMITTED AS PART OF THE RECORD.

IF CORRECTIVE ACTIONS ARE NOT IMPLEMENTED, THE 27 MINERS WHO DIED ON DECEMBER 19, 1984 WILL HAVE DIED IN VAIN. PERHAPS WORSE, MORE WILL DIE UNNECESSARILY.

/dlp

ATTACHMENT #1

TECHNICAL RECOMMENDATIONS AND DISCUSSIONS

Because a comprehensive review of safety and health considerations for longwall mining in the United States had not previously been conducted, the Task Force recognized soon after its organization that it could have a significant impact on the safety and health aspects of longwall mining. For this reason, the Task Force deliberated with sufficient independence to ensure that its final recommendations would not simply restate existing policy and/or regulations.

To accumulate information regarding actual underground conditions and longwall mining practices, the Task Force visited seven mines utilizing 2-entry systems, two mines using 3-entry systems, and five mines using a 4-entry system. All but two of these mines were operated at depths in excess of 1000 feet.

The most difficult problem which confronted the Task Force was determining the degree of applicability of its recommendations to specific longwall mining situations. The Task Force understands that not all of its recommendations will apply to all situations and conditions. After much discussion, a format was selected which classifies all recommendations in one of three categories. The classifications adopted by the Task Force are:

AAA - Safeguard addresses a condition or practice which presents a safety concern such that immediate action is warranted.

BB - Safeguard addresses a potentially severe safety concern which should be considered on a case-by-case basis.

C - This recommendation addresses potential safeguards where additional study and/or research may result in improved safety.

The first seven of the Task Force's recommendations fall within the first category. The Task Force believes that all seven recommendations, or equivalent measures, are needed to insure an acceptable level of protection.

1. FOR ALL LONGWALL MINING OPERATIONS, A SAFE TRAVELWAY, UNDER SUPPORTED ROOF THROUGH TAILGATE ENTRIES OR BLEEDERS TO A MINE EXIT, BE PROVIDED OFF THE FACE ON THE TAILGATE SIDE FOR EMERGENCY PURPOSES AT ALL TIMES WHILE PERSONNEL ARE PRESENT. TO VERIFY THAT TRAVELABILITY IS MAINTAINED, A WEEKLY EXAMINATION OF THIS TRAVELWAY IS RECOMMENDED. - AAA

The exit routes off all longwall panels are limited to the headgate entries, the tailgate entries, and the bleeders inby the face on the tailgate side. A travelway is always maintained on the headgate side of the panel as the mining process itself depends upon the transportation of personnel, supplies, and coal to and from the face area through these entries. Therefore, at least one entry on the headgate side of the longwall face should be free of obstruction and available for exit in emergency situations. In the event of a life-threatening occurrence in the headgate entries, such as a fire in the intake aircourse or an outburst of the face which impedes passage and impairs ventilation, egress from the longwall panel for persons inby the affected area should not require travel across the longwall face. A ground failure or any other blockage in the tailgate entry requires that additional ventilating pressures be supplied to overcome the increased airway resistance caused by the restriction, and to restore the longwall air volume to its prescribed value. Any restriction of the tailgate airway so severe as to prohibit its use as a travelable route may present a serious impairment to proper ventilation of the longwall.

In two-entry longwall systems, where the headgate entry of the previous panel caves with mining, a ground failure in the tailgate entry poses an immediate obstruction to egress from the panel, unless a route is available adjacent to the gob through the bleeders, and an impairment to ventilation of the longwall face.

In multiple-entry systems, a ground failure in the immediately adjacent tailgate entry may not initially impede passage, as a route skirting the obstruction through other gate entries or bleeders may be established. Similarly, ventilation may not be impaired to the same degree as in a two-entry system since an aircourse through adjoining tailgate entries may be established. However, when mining progresses to a point where the face abuts the failed area, egress off the panel on the tailgate side will be impeded and ventilation of the longwall face will be impaired.

2. BLEEDER ENTRIES BE PROTECTED BY ADEQUATE SUPPORT PILLARS AND/ OR BARRIER PILLARS AND BE MAINTAINED TO ENSURE ADEQUATE VENTILATION AND METHANE CONTROL IN GOB AREAS AND ASSOCIATED ENTRIES. - AAA

Bleeder systems are designed and developed to move methane-air mixtures from the gob, away from the active workings, and to the mine return aircourses. Failure of a bleeder system could result in dangerously high accumulations of methane in active workings. Therefore, it is imperative when bleeder systems are employed, that the system be well designed and maintained open with supplemental supports as needed. Some mines develop two or three entries as set-up rooms, and then employ those set-up rooms as bleeder entries. Significant problems are often encountered with such arrangements because the entries often cave and impair the effectiveness of the bleeders. The caving problem in bleeder entries appears to be minimized when bleeder entries are developed separate from set-up rooms. A single large-support pillar (barrier pillar) or multiple pillars of smaller size should be utilized to protect bleeder entries from damage due to overriding stresses around the perimeter of gob areas.

3. ONE-HOUR, SELF-CONTAINED SELF-RESCUERS (SCSRs) BE CARRIED BY EACH PERSON ON A LONGWALL PANEL OR THAT SCSRs BE STORED NEAR THE STAGE LOADER AND ON OR NEAR THE FACE ON THE TAILGATE SIDE OF ALL LONGWALL PANELS. WHEN THE TIME REQUIRED TO TRAVEL ACROSS A LONGWALL FACE BECOMES EXCESSIVE, SCSRs BE STORED AT LOCATIONS ALONG THE LONGWALL FACE. - AAA

If SCSRs are not carried by each person at all times or if SCSRs are not available near the tailgate side of the longwall, it is possible that a person would be unable to reach a SCSR if an emergency occurred while that person was on the longwall face. Travel along the longwall face is often difficult and slow and face lengths may soon exceed 1000 feet. This long travel time could cause a person to be overcome by a toxic atmosphere before that person could reach a SCSR stored near the stage loader. Additionally, the clearance between the conveyor system and the supports along the longwall face is limited and could be blocked preventing escape to the headgate side of the longwall face, thereby leaving the tailgate side of the longwall as the only escape route.

4. AN ENVIRONMENTAL MONITORING SYSTEM BE INSTALLED IN THE INTAKE ESCAPEWAY OF ALL LONGWALL DEVELOPMENTS AND LONGWALL PANELS WHEN BOTH DESIGNATED ESCAPEWAYS ARE VENTILATED BY ONE CONTINUOUS SPLIT OF AIR. THE SENSING DEVICES IN THIS MONITORING SYSTEM BE LOW-LEVEL CARBON MONOXIDE MONITORS OR SENSORS FOR ANOTHER PRODUCT-OF-COMBUSTION THAT ARE NO LESS EFFECTIVE. - AAA

A fire outby the longwall development or panel would contaminate both escapeways with carbon monoxide and smoke, hampering escape. Early warning of the fire condition is critical to the safety of the workers. The monitoring should be done at all times when personnel are on that section. Sensors should be located at the mouth of the panel, immediately outby the last open crosscut and at designated locations between these two points. The sensors should be installed in the main airstream in the entry, in an accessible location for safe calibration and inspection, and in a workmanlike manner. They should not rely solely on the section power center as their power source. A battery back-up or other alternate, off-panel power source should be provided.

To provide an adequate warning to miners in the event of a fire, consideration must be given to the placement and location of the sensors. Research has been conducted to determine proper spacing between different sensors. This research indicates that mine ventilation methods and mine geometry should be considered when determining sensor location.

The monitoring system should be intrinsically safe underground or have the ability to be deenergized under loss-of-ventilation conditions.

→ * A system "warning" level of 10 parts per million (ppm) CO above the pre-established ambient CO level of the mine should be established. An "alarm" level of 15 ppm above this ambient should also be used. The ambient CO level of the underground environment should be defined on a mine-to-mine basis and, in mines where diesel equipment is used, the ambient should be established without the diesels in operation.

When any event is detected at the "warning" level, an alarm should be sounded at a surface installation where a person(s) responsible for action is always on duty when personnel are underground. They should have two-way communication capability with the affected areas of the mine. The sensor(s) in "alarm" condition should be identifiable by location and type of sensor. Additionally, when any sensor detects gas in excess of the preset "alarm" level, an alarm should be given on the affected section at a location where it can readily be seen and heard.

Under either "warning" or "alarm" conditions, instructions should be provided to personnel underground and to the person manning the surface installation as to the appropriate action. Miner training to recognize and respond to these "warning" or "alarm" conditions is very important and needs to be conducted on a regular basis.

In the event of a damaged component or interconnecting cable in the monitoring system, automatic notification of the malfunction should be given at the surface and prompt corrective action should be taken. In the case of lost communication between the surface installation and the remote underground data collection stations, the underground system should still provide the appropriate alarms to the section during emergency conditions.

Resetting the section alarm should be accomplished at a location that would ensure investigation of the cause of the alarm. To verify continued reliable operation of the systems, all sensors should be calibrated once every 30 days using a known concentration of gas and visually inspected once each working shift.

5. AN ENVIRONMENTAL MONITORING SYSTEM BE INSTALLED IN THE BELT HAULAGE ENTRY WHENEVER BELT AIR IS USED TO VENTILATE ACTIVE WORKING PLACES, OR THE BELT ENTRY IS USED AS A RETURN AIRCOURSE. THIS SYSTEM SHOULD UTILIZE LOW-LEVEL CARBON MONOXIDE MONITORS OR SENSORS FOR ANOTHER PRODUCT-OF-COMBUSTION THAT ARE NO LESS EFFECTIVE IN BOTH CASES. ADDITIONALLY, WHEN THE BELT HAULAGE ENTRY IS USED AS A RETURN AIRCOURSE, METHANE MONITORS BE USED. - AAA

The belt haulage entry contains numerous potential fire sources as well as combustible material. When the air ventilating this entry is directed to the active working place, contaminants, such as smoke particulate and carbon monoxide, travel to the face in the event of a belt haulage entry fire. Monitoring should be done any time personnel are on the section. These sensors should be located immediately inby belt drives, at the most inby belt tailpiece and at designated intervals between these two points. Otherwise, sensor locations and system operation should be the same as that described in recommendation No. 4.

Methane build-up is possible in explosive mixtures in the return aircourse. As stated above, there are numerous ignition sources in the belt haulage entry. When methane gas is detected above a pre-established level in this area, all power should be disconnected to the electrical equipment in the affected area to safeguard against explosions of methane-air mixtures. Monitoring should be required whenever the belt haulage entry is also a return aircourse. The sensor stations (consisting of a product-of-combustion sensor and a methane sensor) should be located just inby the point where the panel return joins the main return, just outby the most inby belt tailpiece, and at designated locations between these two points. At 0.8% methane-in-air, an alarm should be sounded and, at 1.0% methane-in-air, all the power to the panel or development should be disconnected. The alarm, sounded for excessive methane content of the air, should be separate and distinct from that sounded for high CO. Otherwise, system operation and sensor placement should be as stated in recommendation No.

6. ALL DIESEL-POWERED EQUIPMENT, OPERATED ON ANY LONGWALL DEVELOPMENT OR LONGWALL PANEL WHERE BOTH THE INTAKE AND ALTERNATE ESCAPEWAYS ARE VENTILATED WITH THE SAME CONTINUOUS SPLIT OF AIR, BE APPROVED UNDER THE PROVISIONS OF 30 CFR, PART 36 AND BE PROVIDED WITH A FIRE-SUPPRESSION SYSTEM. - AAA

Diesel-powered equipment has associated with it an additional safety hazard not present with electrically-powered equipment. The proximity of combustible materials (diesel fuel and hydraulic fluid) with a potential ignition source (the hot manifold) may make the operation of diesels which have not been designed to address these problems too hazardous for use in areas of a mine with limited escape routes. Diesel-powered equipment approved under the provisions of 30 CFR, Part 36 has been designed to reduce the likelihood of a machine fire, and when a fire-suppression system is used in conjunction with these other design features, the potential for an uncontrolled fire on a piece of diesel-powered equipment is greatly reduced.

7. OVERCASTS AND STOPPINGS ON ALL LONGWALL DEVELOPMENT AND LONGWALL PANELS BE STRUCTURALLY EQUIVALENT TO AN 8-INCH HOLLOW-CORE CONCRETE BLOCK STOPPING WITH MORTARED JOINTS, AS PER ASTM E-72 OR EQUIVALENT, AND PROVIDE A MINIMUM FIRE-RESISTANCE OF 1 HOUR, AS PER ASTM E-119 OR EQUIVALENT. - AAA

Controllable ventilation is of utmost importance during all phases of mining, but especially during mine emergencies. The 8-inch hollow-core concrete block is the structural unit most typically used for ventilation control in underground coal mines. To establish minimum structural and fire-resistance requirements for permanent stopping and overcast construction, the 8-inch block with mortared joints is used.

The 8-inch block stopping displays the following performance characteristics:

(1) Minimum transverse loading of 39 lb/ft^2 on a vertical specimen as determined by Section 10, "Transverse Load - Specimen Vertical," of ASTM E-72 method of test, "Conducting Strength Tests of Panels for Building Construction." Section 10 of ASTM E-72 is appropriate for stoppings and overcast walls. However, Section 11, "Transverse Load - Specimen Horizontal" of ASTM E-72 is appropriate for overcast tops with a minimum transverse loading of 39 lb./ft^2.

The minimum transverse loading is an indication of the amount of static pressure that the overcast wall or top can withstand before failing. It has been used as a guideline to assess potential permanent stopping systems for a number of years with successful results.

(2) A minimum 1-hour fire-resistance rating as per ASTM E-119 method of test, "Fire Tests of Building Constructions and Materials."

This rating is considered to be a reasonable time frame for miners to safely exit a fire area via an escapeway during an emergency. Wall partitions in buildings are assigned ratings according to the wall's fire resistance; ventilation control structures in mines are considered on an equal safety basis.

The fire-resistance rating is essentially the time that the wall can be expected to resist the passage of heat, flame, or hot gases, any of which could ignite combustible material on the opposite side of the wall, when the wall is subjected to heat from a carefully controlled energy source, such as a furnace.

All stopping components, including block, metal, wood, mandoors, foam-type squeeze blocks, etc., should combine to meet the performance characteristics previously mentioned. For example, foam-type squeeze blocks have a very short, inadequate fire resistance if left untreated and would, therefore, require a fire-resistant coating.

ATTACHMENT #2

MSHA DISTRICTS RANKED BY NUMBER OF COAL MINE DEATHS IN 1986

MSHA District	Coal Mine Fatals	Rank (Number of Mining Deaths)
1	4	9th
2	5	8th
3	10	5th
4	12	3rd
5	11	4th
6	6	7th
7	13	2nd
8	8	6th
9	16	1st
10	2	10th

District 9:

Accident Classification/Year	78	79	80	81	82	83	84	85	86	TOTAL
Electrical	1			1				2		4
Exploding Vessel Under Pressure										0
Explosives and Breaking Agents										0
Falling/Rolling/Sliding Material		1	1	1		1	1		2	7
Fall of Face/Rib/Side/Highwall				3	2				1	6
Fall of Roof	2	7	2	3	7	3	2		2	28
Fire							27			27
Handling of Material	1								1	2
Hand Tools								1		1
Powered Haulage	2	3		4	5		1		6	21
Hoisting	1									1
Ignition/Explosion of Gas/Dust				15						15
Inundation		1								1
Machinery		1	2	1	1	1		2	4	12
Slip/Fall of Person	2				1					3
Other										0
TOTAL	9	13	5	28	16	5	31	5	16	128

/dlp

ATTACHMENT #3

OCCUPATIONAL SAFETY AND HEALTH LAW CENTER

FIRST ANNUAL MINE SAFETY RANKING

The Twenty Largest U.S. Underground Coal Companies
(Listed In Order of Ranking No. 4 Intermediate Injury Rate (R-INT))

	Ranking #1 Fatality & Permanent Disability Rate	Ranking #2 Non-Fatal Day Lost Rate (NFDL)	Ranking #3 Overall Disabling Injury Rate (RD)	Ranking #4 Intermediate Injury Rate (R INT)*
Consol. Coal Co., Inc.	.14 (.00)	4.0	4.0 (0.78)	1.7 (0.31)
Occidental Petro/Island Crk	.16 (.00)	3.6	3.7 (0.30)	1.8 (0.10)
Bethlehem Steel Corp.	.24 (.00)	5.6	5.6 (0.22)	2.2 (0.10)
Eastern Gas & Fuel Assoc.	.24 (.00)	5.8	5.8 (0.64)	2.3 (0.28)
Exxon Corporation	.14 (.00)	6.6	6.6 (0.30)	2.5 (0.20)
United States Steal Corp.	.17 (.00)	6.3	6.3 (0.72)	2.6 (0.10)
Jim Walter Corporation	.27 (.00)	7.1	7.2 (0.80)	3.1 (0.31)
Sun Company, Inc.	.29 (.00)	6.2	6.2 (0.76)	3.2 (0.40)
Pyro Energy/Costain Hldg. Co.	.28 (.00)	5.0	5.1 (1.16)	3.4 (0.70)
American Electric Powers Co.	.21 (.00)	10.1	10.1 (1.46)	3.5 (0.41)
Westmoreland Coal Co.	.11 (.00)	9.4	9.4 (1.44)	3.5 (0.55)
Sohio Petro/Old Ben Coal Co.	.14 (.00)	9.9	9.9 (1.67)	3.7 (0.91)
Drummond Company	.25 (.00)	8.0	8.0 (1.00)	3.9 (0.57)
Pittston Company	.28 (.00)	9.1	9.1 (1.46)	4.5 (0.68)
Mapco, Inc.	.20 (.10)	8.5	8.5 (1.33)	4.5 (0.83)
Peabody Holding Co., Inc.	.20 (.00)	13.0	13.0 (0.50)	4.5 (0.14)
Rochester & Pitt Coal Co.	.22 (.00)	11.5	11.5 (0.66)	4.6 (0.28)
Fluor Corp./Royal Dutch Shell	.40 (.14)	9.8	9.9 (1.50)	4.6 (0.71)
North American Coal Corp.	.29 (.00)	22.0	22.0 (2.17)	7.1 (0.84)
Savage Neal (Utah Power & Light)	.87 (.85)	20.8	21.4 (1.45)	8.2 (1.28)
TOTAL OR AVERAGE	.23 (.00)	9.5	8.7 (0.66)	3.5 (0.24)

NOTES: Rates are average number of injuries per 200,000 employee hours. All data cover the period 1981-1985. Estimated standard errors are in parentheses. Process Date 7/16/86. Data Source: Mine Safety and Health Administration, U.S. Department of Labor.

Intermediate Injury Rate (R-INT) is comprised of all fatal and permanent disability injuries as well as injuries resulting from roof/side falls, machinery, haulage or electrical/explosive accidents

Senator HATCH. Congressman Nielson, I may have to leave before you conclude your questions because I am late for a couple of other things that I have committed to. But I will turn the time to you. And then if you would close the hearing, I would appreciate it.

Mr. NIELSON. Thank you. It is unusual that a Representative gets a chance to sit on a Senate panel, and I appreciate Senator Hatch doing it. It is even more unusual that a Minority member conducts the hearing; and it is even more unusual that the Representative gets to close it out after the Senator leaves. And I appreciate all of that.

Senator HATCH. We just wanted to give you a thrill for today.

[Laughter.]

Mr. NIELSON. I would like to say to Mr. Main, when I was suggesting early on that perhaps there was blame to go around, and that perhaps the Union should maybe have warned their members a little more carefully than they did, I want to tell you that even though I think there could have been a little better handling of the situation even by the workers themselves, their share of the blame is so minute compared to the other two. I was not implying equal share of blame.

There was the question about the altering of or jerryrigging of the compressor. There was also the indication that some members of the Union knew about the cave-in in Sixth Right. Others did not. It was discussed by some in back rooms and so forth. And the question is whether they should have been allowed to work under those admittedly unsafe conditions. That was my only emphasis.

I want to indicate you and Mr. Dalpiaz have been very careful and very helpful to me as I have come to see you at various times, and I appreciate that. Our goal is simply to prevent this from happening again. And I recognize that most of the things that have been found out today and previously do not affect you at all; in other words, they are not your responsibility in any sense of the word.

I am happy, however, to hear in the testimony that Mr. Don Cologie indicated that you do have a fairly good working relationship, and it was working pretty well prior to the fire, and I hope that the steps that have been taken since that fire will enable you to continue to work and mine coal safely.

Let me indicate that we have heard very different opinions on how safe this situation was. We had Utah Power & Light and Emery Mining indicating it was very safe, and yet we had Herschel Potter say that the miners had no chance at all, not a single chance; even if they had been well-trained and had used the self-rescuers, they still had no chance under the circumstances. Those two are at variance with each other, and we need to get to the bottom of that.

You heard the reference that there were two additional escapeways and I tend to agree with you that the bleeder was not only not well-known to people, that it was available, number one; two, it was so hard to get through, you had to be extremely persistent to get through it; and number three, the other one became impassable when the aluminum overcast broke down. I do not know that we need to belabor this, and I know the Senator is anxious to conclude this, but I do want to say I think you have done a good job with your members. I think you have been cooperative with me in anything I have asked.

I do want to go back to my statement about the two-entry system. As I indicated, I met with you after I had met with Utah Power & Light about the two-entry system and some cases where it might be safer than the three-entry because of cave-ins and overthrust and so forth. And the comment that was made by your officials was, well, that they staged the thing; they are not telling me all the facts; they have not cleaned up the worst part of it so I could see how bad it was under a cave-in situation. And I brought that up to Mr. Lauriski, and he said that was not true; that there is no way to simulate it, there is no way to stage it as you implied they had.

Would you like to comment on his comment?

Mr. **Main**. Yes. What we are engaged in right now is a review of probably about half a dozen mining systems in this country that are attempting to use two-entry systems or are attempting to continue to use two-entry mining systems.

Our evaluations of this thus far have convinced us of two things—one, that the agency that was charged with the responsibility for going out and making those evaluations, which was MSHA, never did it, okay, and it has created the problem that we are all in today, and I think everybody has to understand that. One of the things we have been saying since Wilberg is the agency should be making a good review to examine the differences between the mining systems that are used out there and their ability to mine in compliance with the law. And I think that is a fair question to ask—why aren't those mines operating in compliance with the mine law, which requires additional entries.

Until that issue is answered, it is a problem for all of us. I can guarantee you that.

Mr. **Nielson**. One last question, and I must ask Mr. Dalpiaz. In one of the meetings I had with you, you indicated you did not believe the compressor was the fault. Apparently, Emery Mining does not believe it was the fault, either. Do you still have that view that it was not the compressor; it was something else?

Mr. **Dalpiaz**. It is my belief—I still do not believe it was the compressor that started the fire. You know, an interesting point of that, there are portions of that mine, or of the Fifth Right section, that still have not been investigated. There are certain areas in there, and I believe on your tour you were probably shown, or you can be shown there on the map—and it is my opinion until we investigate the complete area, or the mouth of the section, et cetera, I do not believe anybody can draw a conclusion such as that. And I still do not believe it was the cause of the fire. And I think more importantly, the cause of the fire is all well and fine, but I think—let us do not lose sight, if we have another fire or another situation, can the people get out, regardless of what the cause of the fire was.

Everybody is pointing so many fingers at the causes, et cetera—let us make sure we can get the people out regardless of what causes any coal mine fire. I think that is very, very important.

Mr. **Nielson**. I agree. The Senator was able to stay long enough for me to close, so he will be able to close the hearing properly. Let me thank you for coming.

Senator **Hatch**. I want to thank all of you for coming, too, and I want to thank Congressman Nielson for being here. It is not easy to come all the way over to this side of the Hill. But he has shown a great interest in this and, I think, deserves a lot of credit for his interest.

I want to thank you for coming, Mr. Dalpiaz, and your associate, and Mr. Main, for your testimony. You are going to provide us with some information, and your associate, and we would like to have you do that.

You had one other comment?

Mr. **Dalpiaz**. Yes, I did. I have one very brief one, and I think it showed light at the Wilberg Mine the night of the 19th, the 20th, the 21st, very disturbing, and it is currently in the law, and it has not been used or it was not used at the Wilberg operation, and I think it was of the utmost importance at the Wilberg situation, as referred to as the 103(j) order on the mine, where MSHA takes control of the coal mine. That was nothing but a—I guess the best way I can phrase it is "a circus". That evening, nobody had control of the coal mine. I think MSHA, this Committee, et cetera, ought to look into that very, very closely as far as taking control of an unfortunate situation.

Senator **Hatch**. Thank you. We will certainly try and do that.

I want to thank Senator Kennedy for making this hearing possible. He was very cooperative and very helpful to us, and I want to express my personal gratitude to him as Chairman of this Committee.

With that, I want to thank all the witnesses for being here today, and with that, we will recess until further notice.

[Whereupon, at 2:10 p.m., the Committee was adjourned.]

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